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COMPANY FORMS
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COMPANY FORMS

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SCOTLAND

PREPARED AND ANNOTATED

BY

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"COMPANY LAW AND PRACTICE IN SCOTLAND"

MEMORANDUM OF ASSOCIATION
ARTICLES OF ASSOCIATION
FORMATION AGREEMENTS

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PREFACE

SCOTTISH solicitors have desired, it is believed, for some years, the publication of Forms in connection with the formation and management of companies in Scotland under the immediate direction editorially of a writer trained in the atmosphere of, and more in sympathy with, Scottish views and requirements.

Legal practitioners in Scotland naturally expect to receive less assistance from similar works arranged by English lawyers.

Some of these English publications have been of great assistance; but the tendency of a slavish adherence to English forms under their guidance is apt to be somewhat prejudicial. For the purpose of meeting the desire of Scottish lawyers and accountants and others interested in company matters, I have prepared the present volume of Forms dealing with Memoranda and Articles of Association of Public, Private, and Non-Profit Companies or Associations and with Formation Agreements. It is hoped that the General Notes and other annotations with which these Forms are furnished will be of assistance to the general practitioner. Such English and Scottish authorities, as seemed apposite to the matter in hand, have been cited. The volume, prepared and arranged by one with some acquaintance of English law as well as with his own system of jurisprudence, may also be found useful to English solicitors in dealing with company affairs in Scotland.

In the course of my preparation of these Forms I examined very many constitutions of companies registered in Scotland, and in particular of companies formed under the agency of several leading company solicitors in Edinburgh and Glasgow

respectively. Apart from this examination, many Memoranda and Articles of Scottish companies have come under my notice professionally in reference to their adjustment or otherwise. In these ways I have endeavoured to select the best material upon which the Forms should be based. In this connection I acknowledge the courtesy with which solicitors throughout Scotland and in London met my request for material.

My work on Company Law and Practice in Scotland is for brevity referred to throughout as "Company Law and Practice." The Companies (Consolidation) Act, 1908, is shortly referred to as "the Act." The Companies Acts, 1908 to 1917, are referred to as "the Acts." The present volume only deals with companies falling under the Statute of 1908 and amending Acts.

In regard to the general revisal of the whole work, I am indebted in an especial manner to Mr. David Porter, W.S., of Messrs. Davidson & Syme, W.S., Edinburgh, and to Mr. William Johnstone, of Messrs. Wright, Johnston, & Mackenzie, writers, Glasgow. Both these gentlemen read the whole proof sheets critically, and made many practical and valuable suggestions. Mr. John Smart, W.S., of Messrs. Morton, Smart, Macdonald, & Prosser, W.S., Edinburgh, supplied me with drafts in connection with Formation Agreements, and revised the section dealing with them. Sir Joseph Dobbie, S.S.C., of Messrs. Dalgleish, Dobbie, & Co., S.S.C., Edinburgh, read the proof sheets of the section dealing with Non-Profit Associations. Mr. James Allison, Dundee, Mr. James Anderson, Edinburgh, Mr. W. Marshall Henderson, S.S.C., Edinburgh, and Mr. John R. Johnston, of Messrs. Mitchells, Johnston, & Co., writers, Glasgow, also read the proof sheets in their final form, and rendered me services for which I am much indebted. Mr. Craigie M. Aitchison, advocate, also assisted me in the preparation of the volume.

I acknowledge my indebtedness to the Secretary of the Stock Exchange, London, in reference to the excerpts printed in the Appendix as to Special Settlements and Official Quotations from the Rules and Regulations of that Exchange; also to the Secretary of the Glasgow Stock Exchange for the suggestions received from him.

Mr. William Vickers, in charge of the office of the Registrar of Joint Stock Companies in Scotland, has placed much valuable information at my disposal, and prepared the illustrative abstracts of fees, &c., payable on the registration of the different classes of companies.

The Table of Cases deals with recent decisions so far as reported to the end of March.

G. W. WILTON.

18 GREAT KING STREET,

EDINBURGH, ~~June~~ 1920.

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General
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Articles. Some prefer in place of this method to set forth the business proper of the company, *e.g.*, motor car manufacturers, as the first branch of the "Objects" clause, and to make the adoption of any particular agreement necessary to the creation of such business the subject of the next branch. Cognate to this matter, it may be observed that the practice once much in vogue of entering into preliminary agreements between sellers or other promoters and some one as trustee for the company to be formed is now generally superseded by the practice of concluding such agreements after the company is registered. The necessity for the intermediate trustee is thus avoided. The first subscribers of the Memorandum usually negotiate or settle the terms of these preliminary agreements. These agreements are rarely scheduled either to the Memorandum or to the Articles. They are, however, frequently and conveniently printed as separate papers. Appendix A. to Form No. 1 gives variations of the way in which preliminary agreements may be referred to. Where the older practice is followed of entering into a preliminary agreement with a trustee for the intended company, the company when incorporated is not bound by this agreement by its own force nor can the company ratify it. It is open to the company, and the correct course for the company is, to enter into a new agreement with similar conditions, or to bind itself by a supplementary agreement to adopt and carry out the preliminary agreement made on its behalf. Acts may of course be done by the company after its formation to the effect of making the company bound by a new contract on the same lines as the preliminary agreement where no express agreement by way of adoption is executed. See *Company Law and Practice*, p. 458.

Objects.

The description of the objects of a company's constitution in recent practice has travelled far from the model forms set forth in the Act of 1862, and repeated in the Third Schedule of the Act. The tendency should be to get back to simplicity, and to avoid the confused combination of objects proper and powers merely in memoranda. The recent Report of the Wrenbury Committee upon the Amendment of the Law under the Companies Acts suggests the probability of legislation with a view to restricting the "Objects" clause of the Memorandum to its proper function. The "Objects" clause should deal with the business of the company, and in Appendix B to Form No. 1 are given examples of different kinds of business from which a draughtsman may obtain useful aid in adapting Form No. 1 to any case in hand. These illustrations are taken from concrete cases. The "Objects" clause, it may be observed, is now generally a confused medley of object clauses properly so described and of clauses conferring powers or faculties. See the observations of L. Wrenbury, as L.J., in *Hender-*

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son's Transvaal Estates, 1908, 1 Ch. 743, and of *L. Skerrington in John Walker & Sons*, 1914, S.C. 280, and still more recently of the Court of Appeal, and later of the House of Lords in *Anglo-Cuban Oil, Bitumen, and Asphalt*, 1917, 1 Ch. 477; 1918, A.C. 514. Draughtsmen, particularly English, have shown undue anxiety as to the consequences of omitting some power or other, probably, obviously inherent in the company by the nature of its business or clearly covered according to its constitution by the fourth branch of the "Objects" clause in Form No. 1. This excessive solicitude is responsible for the unreasonable length to which in many cases the "Objects" clause of the Memorandum now runs. The terms and effect of section 16 of the Act seem to have been overlooked. All sorts of "powers" have been inserted in the Memorandum, and this practice has influenced judges in dealing with many cases. It is no doubt convenient that directors and company officials and persons dealing with companies should see that the objects and powers of companies are clearly defined. But except perhaps to some extent for Stock Exchange purposes, there is no real necessity for the current elaboration of the Memorandum under this head. So far as the "Objects" in the strict sense are concerned, it ought to be sufficient if the Memorandum defines in unambiguous terms the business of the company as distinguished from the powers necessary for the conduct of the particular business; or, to use the language of *L. Wrenbury*, the Memorandum must "delimit and identify the objects in such plain and unambiguous manner as that the reader can identify the field of industry within which the corporate activities are to be confined." It is submitted that the correct place for the enumeration of the company's powers, where specification is desired, is in the Articles. The Editor has seen this course followed by important companies with advantage. With courage, judicious excision of powers, clearly inherent in companies and often elementary, ought to be applied in many cases, and shorter Memoranda will result. It is unnecessary to repeat the same clauses both in the Memorandum and in the Articles; and yet, this is, unfortunately, a common practice. Where powers truly so described are not inserted in the Articles, and it is desired that the Memorandum should set them out, it is suggested that after the "Objects" proper have been specified, the Memorandum immediately after the statutory model words, embodied as a distinct sub-clause, may run, viz.:—"4th. To do all such other things," &c., as in Form No. 1, thus:—"And generally for the purposes of the company and among others, to do the followings things," or "And with power (but always without prejudice to all powers implied or inherent in the company), to the company—

"(a) (b) (c), &c. (here specify the several powers to be taken)." Powers.

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Under the direction of the Editor, some important companies in altering their Memorandums have adopted this suggestion, and the Court has approved of the Memorandums so altered (p. 29). In Appendix C to Form No. 1, are set out a series of the powers usually taken. It is for the individual draughtsman to adopt such of them as and in the manner he desires. This method is logical and clearly distinguishes between objects and powers. In the note (p. 29) to this Appendix C, the Editor submits another variation of this method. The danger of setting out in detail certain specific powers as part of a company's constitution is that it may create difficulty as to powers not inserted on the principle of the maxim, *Expressio unius est exclusio alterius*. See *Blackburn v. Flavelle*, 1881, 6 (P.C.) A.C. 628.

Alteration
of Memorandum.

The Memorandum may be altered in regard to its objects by complying with the provisions of section 9 of the Act, and in regard to its share capital by complying with the provisions of sections 41, 45, and 46 of the Act. The sanction of the Court is not required with reference to alteration of share capital by way of increase, consolidation, &c., under section 41, but in regard to all proceedings under sections 9, 45, and 46 it is essential. The most recent Scottish cases with regard to the alteration of the "Objects" clause of the Memorandum are *John Walker & Sons*, 1914, S.C. 280; *Union Bank of Scotland*, 1918, S.C. 21; and *Aberdeen Steam Navigation*, 1919, 1 S.L.T. 249. *Macfarlane, Strang*, 1915, S.C. 196, is no longer authoritative even in the circumstances disclosed in the report. It is of course unsatisfactory that the Scottish decisions should not be in line with the recognised practice of the Chancery Division of the High Court in England. See *John Brown*, 1914, 84 L.J. Ch. 245; *Marshall, Sons*, 1919, W.N. 207. In reference to reorganisation of share capital under section 45, *Schweppes*, 1914, 1 Ch. 322, may be usefully consulted, and as to reduction of share capital, *Caldwell (Papermakers)*, 1916, S.C. (H.L.) 120, is of importance. A company has no power to qualify the usual 4th clause of the Memorandum either by restricting the liability of members imposed thereunder to less than the amount of their shares as specified therein or by increasing such liability in certain events by a sum in excess of their unpaid liability. All such attempts are in breach of the Act, and are *ultra vires*. See section 123 (1) (iv.).

Share capital:
Share rights.

"Share Capital" is the phrase used in both section 3 of the Act and in Form A contained in the Third Schedule to the Act. It is a statutory requirement that the amount of the share capital, with which the company proposes to be registered, must be stated, and it must be divided into shares of fixed amount. But beyond this it is not necessary in the Memorandum to go. Preferential privileges attached to particular classes of shares by the Memorandum may be so expressed as to form "conditions" of the Memorandum so that

the company may be unable to alter these privileges by special or extraordinary resolution. The Articles form the proper document for the definition of share privileges with a view to their modification from time to time as the exigencies of the particular company demand. In this respect Form No. 1, with or without its reference to the Articles, allows the requisite elasticity for alteration in this connection, and enables a company to effect any alteration of its share capital, other than reorganisation, without regard to the proviso in section 45 of the Act. The reserved right to alter as specified in Form No. 1 is itself a "condition" of the Memorandum. Any alteration thereunder is not a modification in the sense of that section. See *Gas Meter*, 1897, 1 Ch. 361, and *Schweppes*, 1914, 1 Ch. 322. There is equally no alteration of the Memorandum involved where share privileges, conferred by the Articles alone, the Memorandum being silent on the subject, are sought to be modified. See also *Company Law and Practice*, p. 24 *et seq.* It is, although unnecessary, usual to insert a proviso in the "share capital" clause of the Memorandum that no new shares shall be created so as to rank in priority to or *pari passu* with *e.g.*, any original preference shares unless the consent of the holders thereof is obtained in accordance with provisions found in the Articles.

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Where the Memorandum is registered without Articles, specially prepared by the company, Table A of the Act becomes the Articles, and in such circumstances the following notice ought to be prefixed to the Memorandum or endorsed upon the backing thereof:—"The "Memorandum of Association of this company is registered without "special Articles of Association"—with or without the addition of—"and the Articles of Association of the Company in terms "of the Companies (Consolidation) Act, 1908, are therefore "contained in Table A annexed to that Act." In such a case, as Table A does not provide for the statement of the minimum subscription, a clause in regard to it, where the company is a public one, should therefore be inserted in the Memorandum after the "Share Capital" clause. In all other cases, although it is competent to specify the minimum subscription in the Memorandum, the specification thereof should be given in the Articles. See section 81 of the Act.

Memorandum
registered
without
special
Articles:
Table A.

Where an application for a special settling day or an official quotation is in contemplation immediately after incorporation, as in the case of public companies with a share capital of such a character as to justify dealings in their shares upon the Exchange, it is the prudent course to submit the constitution of the Company in draft form to the Committee of the particular Exchange for its approval. The Appendix contains excerpts from the Rules and Regulations of the Stock Exchange, London. The Rules of the Glasgow Stock

Stock
Exchange
Rules.

General
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Exchange are also printed in reference to such special settling days and official quotations. The conditions of the Glasgow Stock Exchange are practically the same as those of the Stock Exchange, London. This observation applies to the rules regarding Articles of Association, Trust Deeds, Stock and Share Certificates, and Bonds, which are not printed in the case of the Glasgow Stock Exchange. It does not necessarily follow that, if the rules are formally observed in regard to their particular requirements, the documents submitted will be passed by the Committee. They may contain objectionable provisions, and be rejected on that ground. Hence the wisdom of lodging all documents in draft, so that what is unsatisfactory to the Committee may be rectified.

Memoranda
by Registrar
of Joint Stock
Companies.

The Memoranda issued by the Registrar of Joint Stock Companies for the guidance of the public in reference to the formation and registration of new companies in Scotland, &c., ought to be consulted by practitioners before filing their proposed documents, and for convenient reference it is printed as one of the Appendices to this volume. The Act provides by section 12 that the Articles of Association must be printed, but omits any direction in regard to the Memorandum. Both are invariably printed.

MEMORANDUM OF ASSOCIATION
OF
PUBLIC OR PRIVATE COMPANY.
LIMITED BY SHARES.

Form No. 1.

THE COMPANIES ACTS, 1908 to 1917.¹

[PUBLIC] COMPANY LIMITED BY SHARES.²

MEMORANDUM OF ASSOCIATION

OF

THE COMPANY, LIMITED.

1st. The name of the Company is “

Limited.”³

¹ The Board of Trade desiderate this citation. The Act of 1913 does not affect public companies.

² Where the Memorandum is required for a Private Company, it is useful to insert here the word “Private.” In the case of a Public Company, “Public” may be inserted. So denoted, the nature of the company is seen at once. The subsequent conversion of a Private Company into a Public Company or *vice versa* need not create any difficulty. Such changes usually necessitate radical alterations in the respective Articles of Association and re-printing of the Memorandum and Articles in their altered form.

³ Enquiry should be made of the Registrar as to the proposed name being unobjectionable. See Registrar's Memoranda, paragraph 3, printed as one of the Appendices. In regard to the change of name after registration, the approval of the Board of Trade must be obtained. The Board desiderate that the altered name should indicate the nature of the business of the company or include the names of its directors or sanction may not be given to the alteration.

Form No. 1. 2nd. The Registered Office of the Company will be situate
 Public or Private Company. in Scotland.¹

3rd. The objects² for which the Company is established are :—

- (1) To acquire as a going concern the business [or undertaking]³ of _____ and all or any of the assets of that firm [or company or as the case may be] including, e.g., the _____ oil works situated at _____ and with a view thereto to enter into and carry into effect an agreement between _____

(the sellers) and _____

(the Company [or the trustee for the Company,] as the case may be) dated _____ and subscribed as relative hereto by _____ by way of identification [or the agreement referred to in Article No. _____ of the accompanying Articles of Association.]⁴

¹ The location of the registered office is invariably fixed prior to registration. Its object is to determine the domicile of the company for winding up and other purposes, i.e., whether it is to be an English, Scottish, or Irish company. See sections 3, 62, and 135 of the Act, and *Company Law and Practice*, p. 117. Notice of its precise situation must be duly given before the company commences business, i.e., to carry out the objects for which it is formed. This commercial sense of "business" is obviously intended by sections 62 and 87 of the Act. In practice—and the method is safe—the notice of the exact address of the registered office is filed concurrently with the registration of the company. The company is then in possession of such an office before the directors discharge the business of the company in the more restricted sense of issuing and allotting shares, &c. See also p. 56.

² See General Notes as to scope of "Objects" clause and also notes upon branch (4) of this third clause, as given in this Form No. 1.

³ "Undertaking" appears frequently in Memoranda upon English models, but the phrase is more appropriately used in connection with statutory public concerns, e.g., docks, canals, &c., and should not be used in the case of companies established under the Act.

⁴ It is preferable to make this sub-clause complete in itself, and to avoid the necessity for reference to the Articles in this matter. The Articles may, of course, deal as they usually do, with any agreement of which it is one of the objects of the Company in the Memorandum to adopt. See *Royal Exchange Buildings*, 1911, S.C. 1337. For variations of this sub-clause, see Appendix A to this Form No. 1. With regard to preliminary agreements, the modern practice, as explained in the

- (2) To carry on the business [or businesses] of producers, refiners, importers, and exporters of and merchants and dealers in mineral and other natural oils of all kinds.¹

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Public or
Private
Company.

- (3) To carry on any other business [or businesses] [similar to the main business of the company or usually carried on in connection therewith or as a branch thereof and] which may seem to the company capable of being advantageously carried on in connection with the [foregoing] objects or calculated to develop, enhance the value of or render profitable, directly or indirectly, any properties, assets, rights, or interests of the Company.²

- (4) To do all such other things as are incidental or con-
ducive [in the opinion of the Company] to the
attainment of the above objects.³

General Notes, is to dispense with a trustee by making the formation agreement with the company as incorporated. It is, of course, clear that such formation agreements cannot be executed by or for the Company prior to incorporation unless a trustee is resorted to. Many
dispense altogether with any reference either in the Memorandum or in
the Articles to such agreements. It is sufficient that the Company after incorporation enters into them by authority of the directors. See General Notes.

¹ For other descriptions of "Objects" proper in regard to different businesses, see under Variations appended to this Form No. 1, Appendix B.

² Here follow according to the prevailing practice various "Powers" regarded as "Objects" in Modern Memoranda. Subject to the General Notes, these are given in the Appendix C. to this Form No. 1. It will be easy for the draughtsman to transfer them to the Memorandum where desired. Reference is also made to Appendix D. to this Form No. 1 for variations of or additions to the general ancillary branch of this "Objects" clause. If this sub-clause (3) be regarded as giving power to embark on any business whatever its legal efficacy is doubtful. It is otherwise if it be viewed as a mere expansion of what is truly covered by sub-clause (4). See *London and Provincial Trust*, 1920, 1 Ch. 45.

³ This sub-clause, as underlined, follows closely the statutory form in the Third Schedule of the Act. The phraseology of the statutory form is, and is intended to be, very wide. The company may do anything reasonably covered by it. In *Peruvian Railways*, 1867, 2 Ch. Ap. 617, while the company had not by implication from the nature of its business the power of issuing negotiable instruments, it was held that in virtue of this comprehensive phrase this power was necessarily included where the company deemed

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4th. The liability of members is limited.

5th. The share capital¹ of the Company is [Two hundred thousand] pounds, divided into [One hundred thousand Prefer-

it essential to the attainment of its object, and as the directors had by the Articles all the powers of the company in reference to contracts delegated to them, the directors could contract by accepting negotiable bills. See also *Kingsbury Collieries*, 1907, 2 Ch. 259. "In the opinion of the company" is not found in the statutory model, but it is implied and generally the company delegates its powers to its directors by the Articles. See *Peruvian Railways*, *supra*. This simple sub-clause has not, however, satisfied the desire for encyclopædic universality. It is therefore now common to find such words added as the following:—"Subject to the provision [or under the declaration] that the various objects [or businesses] specified in each of the foregoing clauses [or paragraphs] except when otherwise expressed therein shall be regarded as independent objects and shall be in nowise limited or restricted by reference to or inference from the terms of any other clause [or paragraph] [or by the objects] [or businesses] specified in any other clause [or paragraph] or by the name of the company and that each of such objects [or businesses] may be carried out in as full and ample a manner and construed in as wide a sense as if each object [or business] were the primary object of the incorporation of the company." See *London and Edinburgh Shipping*, 1909, S. C. 1, and *Company Law and Practice*, p. 18. The expansion in any form, however, is not recommended. In *John Brown and Tredegar Iron and Coal*, 1914, 84 L.J. (Ch.) 245, Neville, J., disapproved of such a variation in the proposed alteration of the Third Clause in an application under section 9 of the Act. The addition which is in the nature of a quasi-interpretation clause is, however, somewhat awkwardly, in any case, inserted here. It is thought its introduction, where desired, is more appropriate in the beginning of the "Objects" clause, and it is suggested that the clause may begin thus:—"The objects for which the company is established (subject to the provision [or declaration] that the several objects [or businesses] hereinafter specified in each paragraph except where otherwise so expressed, are to be deemed independent objects and to be in no wise limited or restricted by reference to or inference from the terms of any other paragraph [or by the objects [or businesses] specified in any other paragraph] or the name of the company are," &c. The Editor is aware that this course has been recently followed in the case of some Scottish companies, and as it is thought with advantage. The Editor recommends, however, as the preferable course that the "Objects" clause should omit all reference to such a quasi-interpretation clause, whether at the beginning or at the end of the recital of the various powers taken. Various incidental or auxiliary powers are frequently taken explicitly although these additional clauses are only expansions of this statutory sub-clause. For specimens of such clauses, see Appendix D. to this Form No. 1.

¹ Where it is intended that the original share capital should consist of more than one class of shares, it is preferable as provided in this Form No. 1, to specify in the Fifth clause of the Memorandum the

ence] Shares of [£1] each [and One hundred thousand Ordinary] Shares of [£1] each [with power to attach such preferential, special, qualified or deferred rights, privileges and conditions to such part of the share capital, original or increased, of the Company, as may be determined at the time of issue in terms of the Articles of Association of the Company.]¹

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Company.

WE, the several persons,² whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association, and we respectively agree to take the number [and class³] of shares in the capital of the Company set opposite our respective names.

NAMES, ADDRESSES, AND DESCRIPTIONS OF SUBSCRIBERS.	Number [and class] ² of Shares taken by each Subscriber.
1. ROBERT H. STEVEN, East India Merchant, No. 109 Rentfield Terrace, Glasgow, - - - - -	One [Preference Share]. ³
2. RICHARD HUTH, Shipowner, No. 169 Baynton Road, Glasgow, - - - - -	One [Ordinary Share].
3. MATTHEW T. HUTCHISON, Merchant, No. 123 Great Western Road, Glasgow, - - - - -	One [Ordinary Share].
4. JOHN KEMP, Oil Refiner, No. 61 St. Vincent Street, Glasgow, - - - - -	Two thousand [Preference Shares]. ⁴
5. FINLAY KERNIAN, Merchant, No. 124 Leadenhall Street, London, - - - - -	One [Ordinary Share].
6. CHARLES WALTER, Merchant, No. 90 Bishopgate Street, Within, London, - - - - -	One [Ordinary Share].
7. JOHN T. CARSON, Merchant, No. 115 West Regent Street, Glasgow, ⁵ - - - - -	One [Ordinary Share]. ⁶

Dated this 15th day of July, 1919.

Witness to the above signatures—

MARK RAWSON, Writer,
90 Wellington Street, Glasgow.

classes of shares into which the share capital is so divided. If no such provision be made in the Memorandum, and it is desired subsequently to divide the shares into different classes, the aid of section 45 of the Act must be invoked with an attendant application to the Court of Session for confirmation of the necessary special resolution.

¹ This "power" can be omitted. Provisions in regard to the incidence of the rights of shareholders are more properly set forth in the Articles as explained in the General Notes. Such an empowering provision as is given in this clause, although common, effects nothing. Reference is also made to Appendix E for variations found in practice of this "Share Capital" clause.

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Private
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² Seven or more persons must subscribe in the case of a public company. Two are sufficient for a private company.

³ Where there is more than one class of shares, this is a useful variation upon the statutory Form. A double column may be provided.

⁴ It is a safe course for a subscriber to subscribe the Memorandum for no more than the necessary single share. Complications may otherwise, and do frequently, arise where this course has not been adopted. Section 72 of the Act provides for the acquisition of qualification shares of directors by their subscription to the Memorandum for the requisite shares, but even in their case a separate contract signed and filed in terms of that section is preferable. See *Palmer's Company Precedents*, 11th edition, 1912, p. 6.

⁵ In dealing with the designation or description of subscribers, the designation usually precedes the address of the subscriber in Scottish practice.

⁶ The Act prescribes that the subscribers shall sign the Memorandum and Articles of Association, and it is the practice for subscribers not to subscribe their full names but only their usual signatures. The Register of Members should disclose their full names. The subscribers themselves must insert the number of shares they take. See section 3 (3) of the Act. Frequently, delay in registration is caused by neglect of the statutory direction.

MEMORANDUM OF ASSOCIATION.

FORM NO. 1.

Form No. 1.

Public or
Private
Company.

Appendix A.

APPENDIX A.

VARIATIONS OF "OBJECTS" CLAUSE OF MEMORANDUM AS TO ADOPTION OF PRELIMINARY OR FORMATION AGREEMENTS.¹

To adopt and carry out without modification or with such alterations as may be agreed on an Agreement dated 1919, entered into between _____ shipbuilders, Glasgow, *of the first part*, and _____, steamship owners, Cardiff, *of the second part*, for the building and purchase of a steamship to be called the "Gleneagle";

or

To adopt and carry into effect, with such modifications or alterations (if any) as may be agreed upon, a Minute of Agreement between _____, *of the first part*, and A B, as trustee for and on behalf of the company, *of the second part*, dated 1919, having for its object the acquisition of the subjects forming Nos. 57 and 59 Rillbank Square, Edinburgh, and of the Home or Institution carried on therein under the name of the Rillbank Nursing Home;

or

To adopt and carry into effect, with such additions and modifications as may be agreed upon, the Agreement and Underwriting Contract referred to in Article [2] of the Articles of Association of the company;

or

To acquire from Senhouse & Company, Merchants, Cape Town, of which firm Robert Senhouse, Merchant, Dundee, is the

See General Notes to Form No. 1.

Form No. 1. sole partner, as at 1919, the business of Merchants and Agents carried on by the said Senhouse & Company at Cape Town, with the whole property and assets, heritable and moveable, of whatever nature and wheresoever situated, belonging to, or held in trust for the said Senhouse & Company and the said Robert Senhouse, as sole partner foresaid, in connection with the said business, together with his whole rights and interests therein, including the goodwill thereof, and all contracts and book debts outstanding as at said date, although referable to a period prior to said date, but subject to the whole debts, obligations, and liabilities affecting the said business outstanding as at said date, although referable to a period prior to said date; and with this view, to adopt, execute, and carry into effect, with or without modification, a Minute of Agreement proposed to be entered into immediately after the incorporation of the company, between the said Senhouse & Company and the said Robert Senhouse *of the first part*, and the company, *of the second part*, and of which proposed Agreement a draft has been docquetted by the subscribers hereto;¹

or

To acquire the business lately carried on by the Limited, now in liquidation, and hereinafter referred to in this Memorandum, as the "old company," having its registered office at together with the goodwill of such business, and the whole of the patents, rights, and all other assets held by the old company, and to undertake all or any of the burdens and obligations of the said business; and for these purposes forthwith, to enter into, execute, and carry into effect a Minute of Agreement (in terms of the draft which, for the purpose of identification, has been docquetted and subscribed by as relative hereto) among (1) the old company and A B, chartered accountant, Edinburgh, the liquidator thereof, *of the first part*, (2) X Y, solicitor, and the said A B, as trustees for behoof of certain creditors therein referred to, *of the second part*, (3) C D, motor car manufacturer, Glasgow, *of the third part*, (4) F G, consulting engineer, residing Glasgow, *of the fourth part*, and (5) this company, *of the fifth part*, for

¹ An agreement, such as is embraced in this variation, involves the payment of *ad valorem* stamp duty upon the debts taken over and the liabilities undertaken as part of the consideration for the transfer. See General Notes on Formation Agreements.

carrying out a scheme of reconstruction of the old company, with full power to agree to any modification of the terms of the said Minute of Agreement; and to carry on the said business either in the same manner, as heretofore or otherwise, and to develop and extend the same;

Form No. 1.

Public or
Private
Company.

Appendix A.

or

To acquire by purchase and take over as a going concern the business now carried on by the firm of

together with the goodwill of the same, and the whole or any part of the heritable and moveable property and assets, including leases and contracts belonging to the said firm, and that at such price and on such terms and conditions as may be arranged between the said firm and the company, and to hold, work, carry on, extend, develop, and turn to account the business, properties, rights, and interests so acquired;

or

To acquire and take over as from and after the 31st day of July, 1919, the business of William Hazell & Sons, wine and spirit merchants and distillers in Aberdeen, with the goodwill thereof, and the heritable and moveable property, plant and machinery, and stock-in-trade in connection therewith, and to undertake the whole or part of the liabilities, engagements, and contracts of the said business; to acquire and take over the business of any other firms or persons, and to undertake the whole or part of their liabilities, engagements, and contracts, and that upon such terms as may be agreed upon between the company and the parties interested; and to carry on and develop the said business or businesses;

or

To acquire the Estate of Ransiva, situated in the Province of , Straits Settlements, and with that object to adopt and carry into effect, with such additions and modifications as may be agreed upon, an Agreement made between the Western Trust, Limited, incorporated under "The Companies (Consolidation) Act, 1908," and having its registered office at , Glasgow, acting on its own behalf, and also on behalf of (first) [name of native or other proprietor of estates acquired], and (second) The Rubber Estates Trust, Limited, , Federated Malay States, of the first part, and X Y, Chartered Accountant,

Form No. 1. Glasgow, as trustee for and on behalf of the company, *of the*
 Public or *second part*, dated the day of , 1919 ;
 Private
 Company. or

Appendix A. To acquire and develop certain rubber estates and lands in
 the Malay Peninsula, known as the Estate, situated
 in the district of Klang, in the State of Selangor, and with that
 object to adopt and carry into effect, with such additions and
 modifications as may from time to time be agreed upon, an
 Agreement made between [here insert the names, etc., of the
 sellers to the company], *on the one part*, and X Y, Writer
 to the Signet, Edinburgh, as trustee for and on behalf of the
 company, *on the other part*, dated the day of ,
 1919 ;

or

To acquire the interests of Sir. William Leaward, St.
 David's Mount, Montreal, the Canadian Development Syndicate,
 Limited, having its registered office at No. Street, Glasgow,
 and the Lonesome Mines, Limited, incorporated in Canada, and
 having its registered office at No. Street, Montreal, in certain
 leases of oil bearing land at Huxting, in the province of Ontario,
 in the Dominion of Canada, and in the machinery, engines, plant,
 tools, stores, furniture, and other effects on or about the premises
 comprised in the said leases; and for that purpose, to adopt and
 carry into effect, either with or without modification (1) an
 Agreement already extended, engrossed, and expressed to be made
 between the said Sir William Leaward, *of the first part*; the
 Canadian Development Syndicate, Limited, *of the second part*;
 the Lonesome Mines, Limited, *of the third part*; and Richard
 Mure, *of the fourth part*; and (2) an Underwriting Contract
 between the said Richard Mure and the Canadian Development
 Syndicate, Limited.

MEMORANDUM OF ASSOCIATION.

FORM NO. 1.

Form No. 1.

Public or
Private
Company.

Appendix B.

APPENDIX B.

VARIATIONS OF "OBJECTS" CLAUSE OF MEMORANDUM AS TO NATURE OF BUSINESS TO BE CARRIED ON.¹

BOARDING HOUSE.

(a) To acquire and take over Rutland House, Ross-shire, with its adjoining pleasure and other grounds, and the whole furniture, plenishing and other effects therein.

(b) To carry on the business of a boarding house, pension, and recreative establishment at Rutland House, foresaid, or elsewhere, and also to carry on there or elsewhere the business of restaurant, café, refreshment room, and boarding house keepers, purveyors, caterers for public amusements, hirers of motor cars, gardeners, laundrymen, and agricultural dairy and poultry farmers.²

CHEMICAL PRODUCT MANUFACTURERS.

To collect or procure kelp, seaweed, and marine plants and any product thereof, and deal in, buy, sell or work the same, and produce and supply iodine, and all other useful products and compounds obtained from the treatment of seaweed and marine plants, and to manufacture and sell such products and compounds containing any or all of such products and compounds, and generally to carry on the business of manufacturers and salesmen of chemical products and of chemicals generally or other kindred businesses.

¹ This is not intended to be a comprehensive List of Objects or Businesses.

² The addition of such a phrase as "and to enter into any transactions which the directors of the company may deem in any way auxiliary to the objects of the company and proper to be carried on or entered into in connection therewith" ought to be avoided. See note, p. 9.

Form No. 1.

CINEMATOGRAPH FILMS AND PICTURE HOUSES.

Public or
Private
Company.

Appendix B.

(a) To carry on the business of entertainment and amusement proprietors and managers, and to provide for the production, representation, and performance of cinematograph films, pictorial lectures, operas, operettas, plays of any description, vaudevilles, pantomimes, promenades, or any other musical or dramatic performances or entertainments.

(b) To construct, erect, equip, and provide buildings, halls, or other suitable premises for entertainment and amusement purposes, including theatres, cinematograph halls, picture palaces, music halls, and pavilions, and other buildings, premises, and works convenient for the purposes thereof, and all the other purposes above mentioned, and to manage, maintain, and carry on the same when so constructed.

(c) To acquire, by purchase or otherwise, manufacture, sell, let or hire, or otherwise trade in cinematograph and other films of every description, and in all goods, articles, and things usually used or dealt in by persons engaged in any of the above-mentioned businesses.

COALMASTERS.

To carry on the business of coalmasters, mining and colliery proprietors, coke manufacturers and coal merchants, [ore merchants, ironmasters, steelmakers, and converters, miners, smelters, quarry owners, brickmakers, engineers, gasmakers, manufacturing chemists, metallurgists, timber merchants, waggon builders, importers and exporters, shipowners and charterers of vessels], and any other business or trade in any way similar to or connected with or incidental or conducive to the advancement of the foresaid businesses, or any of them.

COLONIAL OR FOREIGN MERCHANTS.

To carry on the businesses of Colonial merchants and agents, manufacturers, importers, exporters, contractors, brokers, dealers, carriers, storekeepers, and agents of all kinds in any part of the world and in particular but without prejudice to the said generality in , and in connection with the said businesses to purchase, manufacture, make merchantable, sell, exchange, and deal in, in any way whatever, all goods, merchandise, wares,

commodities, produce, products, substances of any description whatever, including but without prejudice to said generality, metals, minerals, stones.

Form No. 1.
Public or
Private
Company.

Appendix B.

COMPANY PROMOTERS AND UNDERWRITERS.

(a) To carry on the business of underwriters of shares, stocks, debentures, debenture stocks, bonds, mortgages, obligations and securities of all kinds; subscribe for, underwrite, issue on commission, place or guarantee the placing of, or otherwise take, conditionally or unconditionally, hold, and deal in shares, stocks, debentures, debenture stocks, bonds, mortgages, obligations, and securities of any kind issued by any company, corporation, or undertaking, of whatever nature, incorporated, constituted or carrying on business, in [the Commonwealth of Australia], or elsewhere, either at home or abroad, or the debentures, debenture stocks, bonds, obligations, and other securities issued by any Government, Sovereign Ruler, Commissioners, Council, public body, or authority supreme, municipal, local, or otherwise; and

(b) To carry on all kinds of promotion business, and in particular to promote, float, form, constitute, lend money to, assist, and control any syndicates, trusts, companies, corporations, associations, or undertakings whatsoever in aid of such promotion business.

CONFECTIONERS.

To carry on the business of manufacturers, merchants, and exporters, wholesale and retail, of and in confectionery, preserves, aerated and mineral waters, ices, and other similar goods, and to equip and carry on cafés, tea or refreshment rooms, or any other trade or business capable of being conveniently carried on in connection with, or calculated, directly or indirectly, to enhance the value of or render profitable the company's business, or property or rights.

COTTON AND JUTE SPINNERS.

To carry on all or any of the businesses following, namely cotton spinners, doublers, power loom cloth manufacturers, flax, hemp, and jute spinners, linen, silk, muslin, cotton, and wool manufacturers, flax, hemp, jute, silk, muslin, and wool merchants, wool combers, worsted spinners, woollen spinners, yarn mer-

Form No. 1. chants, worsted stuff manufacturers, bleachers, dyers, and makers of vitriol, bleaching and dyeing materials, and to buy and sell, comb, prepare, spin, dye, weave, manufacture and deal in flax, hemp, jute, wool, cotton, silk, and other fibrous substances, buy and sell and deal in linen, cloth, silk, muslin, and other goods and fabrics, whether textile, netted, or looped, and to carry on any trade or branch of business subsidiary or ancillary to or incident or allied to those before specified, or capable of being conveniently carried on in connection therewith, or calculated, directly or indirectly, to benefit the company.

Public or
Private
Company.

Appendix B.

ELECTRICIANS.

To carry on the business of electricians, mechanical engineers, suppliers of electricity for the purposes of light, heat, motive power, or otherwise, engineers, brassfounders, gas and electric meter manufacturers, and manufacturers of and dealers in all apparatus and things required for or capable of being used in connection with the generation, distribution, supply, accumulation, and employment of electricity or gas or other illuminant.

ENGINEERING CONSTRUCTION, ETC.

To carry on the business of an engineering construction company and consulting engineers, and in connection with the same to acquire, undertake, carry out, and execute any contracts, decrees, concessions, powers, and privileges which may seem to the company capable of being turned to profitable account.

or

To carry on the business of structural engineers, designers and erectors of iron or wood or other composite buildings, roofs, bridges, structures, substructures, fittings and appliances of every kind and description, builders, contractors, and architects for all classes and types of erections and composite buildings for public and private works, waterworks, sewage works, railways, tramways, docks, harbours, wharves, viaducts, aqueducts, piers, watercourses, or other works, and every description of contract work, and to manufacture and work in stone, wood, brick, tile, terra-cotta, copper, lead, iron, steel, tin, zinc, galvanised iron, aluminium, platinum, rubber, gutta-percha, and other metals and substances, and to carry on all trades and businesses and the manufacture of all appliances and fittings connected with such buildings and other works and contracts.

EXPLOIT AND DEVELOP INVENTION.

Form No. 1.

To acquire from _____ an invention of a _____
 machine for _____ together with all machines _____
 manufactured thereunder; to work and develop the said _____
 invention and carry on in the United Kingdom and abroad the _____
 business of manufacturing or selling machines in conformity _____
 with the said invention or otherwise, together with the manu- _____
 facturing of all accessories thereto in all its branches and details; _____
 to contract for the making of _____ by machines to _____
 be manufactured in accordance with said invention or otherwise, _____
 and to execute the same; and to obtain protection for, or to _____
 patent in any part of the world, the said invention or any im- _____
 provements thereon, or any other improvements in machinery _____
 plant, or apparatus.

Public or
Private
Company.

Appendix B.

GENERAL MERCHANTS.

To carry on business as general merchants and agents,
 importers and exporters, and to undertake and carry on all
 kinds of commercial trading and dealing, and to buy and sell,
 import, export, and deal in all kinds of merchandise capable
 of being profitably dealt with in connection with the business
 of the company.

IRON AND STEEL FOUNDERS.

To carry on the business or businesses of iron and steel
 founders, engineers, and manufacturers of implements and
 machinery of all kinds, toolmakers, brassfounders, coppersmiths,
 metal workers, boilermakers, patternmakers, machinists, iron
 and steel converters, smiths, and builders, [electrical engineers,
 ship and boat owners and hirers, and shippers] in the United
 Kingdom of Great Britain and Ireland, and abroad.

. LADIES' TAILORING.

To carry on the business in all its branches of a high-class
 dressmaker and ladies' tailor in [Edinburgh] or elsewhere, and
 the business of general drapers and tailors, and dealers in or
 manufacturers of any other articles or goods of a character
 similar or analogous to the articles or goods dealt with in any of
 such businesses.

Form No. 1.Public or
Private
Company.**MACHINERY CLEANERS.****Appendix B.**

To carry on the trade or business of manufacturers of and dealers in cloths and other like materials for the cleaning of machinery, of washers and cleaners of such cloths and other like material, and of lenders of such cloths and other like material, and any other trades or businesses incidental to or arising out of or which may conveniently be carried on in connection with the said trade or business of the company.

MISCELLANEOUS TRADES.

To carry on all or any one or more of the following trades or businesses, that is to say, the trades or businesses of mechanical engineers, ironfounders, boilermakers, manufacturers of mining plant, machinery, or implements, toolmakers, brassfounders, metal workers, millwrights, machinists, smiths, wood workers, builders, metallurgists, electricians, electrical contractors, electrical engineers, suppliers of electricity for the purposes of light, heat, sound, power, or otherwise; and of makers, repairers, dealers, suppliers on hire, hire purchase, or any other system, of and in all machinery, apparatus, plant, materials, and things required for or capable of being used in connection with the generation, distribution, supply, accumulation, and employment of electricity, or otherwise in connection with any of the trades or businesses aforesaid.

MOTOR MANUFACTURERS.

To carry on the business or businesses of motor manufacturers, engineers, electricians, founders, makers, and repairers of, and dealers in, and hirers of, motors of all kinds, accumulators, motor cars, carriages, cycles, launches, vessels, flying machines, hydroplanes, and all other machines and vehicles, and all accessories, tyres, and wheels, ship and boat builders, oil merchants and manufacturers, manufacturers of all materials for motive power, rubber merchants and makers, joiners, coach, van, and lorry builders, cabinetmakers, upholsterers, machinists, tool makers, fitters, tube makers, chain makers, wire drawers, japanners, annealers, enamellers, electroplaters, chemists, painters, packing-case makers, ship and boat owners and hirers, and shippers in the United Kingdom of Great Britain and Ireland, and abroad.

NEWSPAPER PROPRIETORS.

Form No. 1.

To carry on the businesses of newspaper proprietors, news-agents, journalists, reporters, printers, photographers, block-makers, stereotypers, booksellers, stationers, publishers, and billposters in all their branches.

Public or
Private
Company.

Appendix B.

NURSING HOME.

To carry on the business of a private nursing home or institution under the name of the Nursing Home; to provide and supply nurses either for the purpose of attending the patients in the home or elsewhere, and to purchase, acquire, and carry on any other home or institution or business similar to or connected with the business of the company.

OIL AND GAS PRODUCERS.

To carry on the business of searching for and obtaining oil and gas from the lands situated in and comprised in the leases [describe the leases or concessions as the case may be], or from any other lands in [British North Borneo] or elsewhere, and of storing, testing, refining, selling, distributing, or otherwise disposing of or dealing with the oil and gas so obtained, and for the purposes aforesaid, or any of them, to sink wells and construct, acquire, use, and maintain reservoirs, storing houses, warehouses, and other buildings, railways, bridges, roads, ways, pipes, tramways, and other works and conveniences which may seem directly or indirectly serviceable for enabling the company to obtain, store, prepare for use, and carry away, sell, distribute, or transmit any oil or gas obtained as aforesaid, or any other substances which may be taken from any land belonging to or occupied by the company.

OIL PROSPECTING AND DEVELOPING.

To purchase, hold, take on lease or licence or otherwise acquire, prospect, develop, utilise, work, and turn to account lands and estates of any kind, or any concessions, rights, privileges, options, or other interests in such lands and estates or any undertakings or businesses in any part of the world, yielding naphtha, petroleum, oil, natural gas, bitumen, asphalt, or ozokerite, or other mineral oils or substances, and to sink wells, make borings, and otherwise to search for, obtain, exploit, develop, render suitable for trade, carry away and sell naphtha,

Form No. 1. petroleum, and other mineral oils, natural gas, asphalt, ozokerite,
 or other mineral substances ;
 Public or
 Private
 Company. *or*

Appendix B. (a) To acquire licences, concessions, privileges, grants, and
 other rights of or over lands for prospecting for oils, metals,
 minerals, and other commodities in or elsewhere,
 and to work, develop, and turn the same to account.

(b) To prospect, examine, peg out, and explore any areas,
 territories, and places in or elsewhere, and for
 that purpose to employ experts and other agents, and equip
 expeditions or commissions, in connection therewith.

(c) To search for, get, win, work, raise, make marketable,
 and use, sell, and dispose of oil, coal, iron, clay, precious and
 other metals, minerals, and other substances or products, on,
 within, or under any property of the company, or elsewhere,
 and to grant prospecting and mining and other licences, rights,
 or privileges for such purposes, and to crush, win, get, quarry,
 smelt, calcine, refine, dress, amalgamate, manipulate, and prepare
 for market oil, ore, metal, and mineral substances of all kinds,
 and to carry on any metallurgical operations which may seem
 conducive to any of the company's objects.

RUBBER PLANTERS.

To carry on in or elsewhere the business of
 rubber, coffee, tea, tobacco, cotton, ramie, sugar, cocoa, cocoanut,
 copra, and fruit growers, planters, cultivators, farmers, importers,
 exporters, timber dealers, saw millers, or any other business or
 matter connected with agriculture in any form that the Company
 may deem necessary, and to buy, sell, grow, prepare for market,
 manipulate, import, export, and deal in rubber, coffee, tea,
 tobacco, cotton, ramie, sugar, cocoa, cocoanuts, copra, and fruit of
 all kinds, and to manufacture and deal in articles of all kinds in
 the manufacture of which rubber is used, and to carry on
 business as shipowners and carriers by land and sea, and, so far
 as may be deemed expedient, the business of general merchants,
 and to buy, clear, plant, and work estates and plantations, and
 to carry on any other business or businesses which may seem to
 the Company capable of being advantageously carried on in
 connection with the above, or calculated to develop, enhance the
 value of, or render profitable any property or rights of the
 Company.

Note.—This clause may be split up at discretion.

SHIPOWNER.

Form No. 1.

To carry on the business of a shipowner in all its branches, and any other business connected therewith or incidental thereto, or usually transacted by shipowners as part of or auxiliary to the ownership and management of ships, or which for the time being may be deemed expedient to be carried on therewith; [*and in the case of a single ship company, add* and primarily to purchase or acquire the steamship called or intended to be called "The Talisman".]

Public or
Private
Company.

Appendix B.

STOREKEEPERS AND SAFE DEPOSITORIES.

To carry on the business of store or warehouse keepers, and to receive all classes of goods, produce, articles or commodities on deposit for safe custody, and to issue receipts, acknowledgments, or warrants therefor, in such form as may be deemed expedient, and to carry on any other business or businesses which may seem to the company capable of being conveniently carried on in connection with the above, or calculated to develop, enhance the value of, or render profitable, all or any of the property and rights of the company.

TIMBER MERCHANTS.

To carry on the businesses in all or any of their branches of timber merchants, lumbermen, agents, brokers, sawmill proprietors, timber growers, exporters of timber, forest owners, forest planters, wood sawyers, and wood workers, and to purchase, lease, clear, plant, and work timber forests and estates, and to purchase options over the same, and to buy, sell, grow, prepare for market, manipulate, import, export, treat, preserve, and deal in timber and wood of all kinds and their by-products, and to manufacture and deal in articles of all kinds in the manufacture of which timber or wood is used.

TRUST INVESTMENT, MORTGAGE AND AGENCY.

(a) To carry on the business of an investment, lending, and agency company, and generally the business of financiers, and to exercise, as principal, or as trustee or agent for any person or persons, all or any of the objects hereby authorised.

(b) To invest the capital and other moneys of the company, either by way of purchase, or by way of loan upon the security of shares, stocks, debentures, debenture stocks, bonds, mortgages, obligations, and securities of any kind, issued or

Form No. 1. guaranteed by any person or company or corporation, or undertaking of whatever nature, constituted or carrying on business in the United Kingdom of Great Britain and Ireland, in the Commonwealths of Australia or South Africa, in the Dominion of Canada, in India, in any British colony or dependency or possession, in the United States of America, or in any foreign country or State, and of debentures, debenture stocks, bonds, obligations, and other securities issued or guaranteed by any Government, Sovereign Ruler, Commissioners, public body or authority—supreme, municipal, local, or otherwise—whether at home or abroad; provided (1) that no investment imposing unlimited liability on the company shall be made; (2) that the moneys of the company shall neither be employed in the purchase, nor lent upon the security, of its own shares or stock; (3) that no purchase or acquisition of any particular security or investment shall be made, by which, at the price paid therefor by the company, the holding of the company in such security or investment, or in any one company, corporation, or undertaking, would exceed in amount [one-twentieth] part of the combined subscribed share and debenture capital or of [one-tenth] part of the subscribed share capital of the company, for the time being, whichever is the greater; and (4) that no funds of the company shall at any time be lent upon or invested in any shares involving liability which is to remain uncalled for any period exceeding two years.¹

Public or
Private
Company.

Appendix B.

(c) To acquire any such shares, stocks, and others before mentioned by subscription, syndicate participation, tender, purchase, exchange, or otherwise, and to subscribe for the same, either conditionally or otherwise, and to guarantee the subscription thereof for or on behalf of the company, and to exercise and enforce all rights and powers conferred by or incident to the ownership thereof.²

¹ Provisoes 1, 3, and 4 are self-imposed limitations for the purpose of inspiring confidence in the administration of such a company. No. 2 is in accordance with the law as regards the purchase by a company of its own shares; but for the purposes of Stock Exchange quotations or settlements a clause of this nature is usually inserted either in the Memorandum, or preferably in the Articles, and is directed against transactions in the purchase of or on the security of the company's shares.

² If it is intended to include the business of underwriting share or other issues, this should form the subject of a separate clause.

UNIVERSAL PROVIDERS.

Form No. 1.

Public or
Private
Company.

Appendix B.

To carry on within the United Kingdom of Great Britain and Ireland or abroad, the business, both wholesale and retail, of universal providers and general store merchants, manufacturers, factors, agents, and dealers [and without prejudice to such generality, the business of manufacturers, merchants or dealers of or in respectively, drapery goods, haberdashery, hosiery, silk and silk goods, cotton and cotton goods, carpet and cloth goods, furs, textile and other fabrics of all kinds, millinery, mantle making, dressmaking, tailoring, hatters, clothiers, outfitters, gloves, lace goods, feathers, corsets, stays, dyers and cleaners, mourning goods, boots and shoes, umbrellas, upholstery, household furniture, furnishings and other goods, ironmongery, turnery, crockery, hardware, stationery, ornaments, jewellery, plated goods, china, glass, leather goods, trunks, boxes, portmanteaus, indiarubber and waterproof goods, perfumery, soaps, general fancy goods and toys, articles required for ornament, wear, recreation, amusement, or sport, tools, garden requisites, agricultural implements, motor cars, cycles, scientific, athletic, optical, and photographic apparatus, appliances, and instruments, musical instruments, bags and baskets, goldsmiths, silversmiths, dealers in precious stones, jewellers, clock and watchmakers, printers, publishers, newsagents, book and music sellers, picture and print dealers and framers, coach and carriage builders, coach and carriage hirers, jobmasters and livery stable keepers, funeral undertakers, furniture, etc., removers, owners of depositories, warehousemen, carriers, railway and shipping agents, saddlers, painters, house decorators, glaziers, sanitary engineers, gasfitters, electrical engineers, plumbers, land estate and house agents, builders, contractors, auctioneers, valuers, refreshment contractors, caterers, and entertainment purveyors, tent, marquee, ball and rout furnishers, restaurant keepers, hotel-keepers, grocers, tea, coffee and spices, provisions and produce, bakers, bread, biscuits, and farinaceous foods, pastrycooks and confectioners, butchers, meat salesmen, fishmongers, poultry dealers, cheesemongers and butter dealers, dairymen and cowkeepers, fruiterers, greengrocers and florists, hairdressers, coal, wood, and other fuel, corn, seeds, hay, straw, forage, and stable requisites, beer, wines, spirits, mineral, aerated, and other waters and liquors, patent medicines and all articles and commodities of personal and household use and consumption and, generally, all kinds of business or businesses usually carried on by trading

- Form No. 1.** concerns known as "stores" or "universal providers,"] and any other businesses, manufacturing or otherwise, which the company may deem capable of being carried on in connection with the above or calculated, directly or indirectly, to benefit the company or enhance the value or render profitable any of the company's other properties, assets or rights.
- Appendix B.**

Note.—This "Objects" clause would seem sufficiently comprehensive without the portion in brackets, but some deem it necessary to particularise as in the bracketed portion the various departments of business or manufacture in which such a catholic concern may engage. The simple unbracketed clause seems preferable. If a company, after formation and carrying on business, finds itself in a position to engage in some other analogous business not embraced within its objects, it can alter the provisions of its Memorandum for the purpose by Special Resolution, and obtain the sanction of the Court by an application under section 9 of the Act.

MEMORANDUM OF ASSOCIATION.

FORM NO. 1.

Form No. 1.

Public or
Private
Company.

Appendix C.

APPENDIX C.

VARIATIONS OF "OBJECTS" CLAUSE IN MEMORANDUM AS TO "POWERS" WHERE THE INSERTION OF THESE IS PREFERRED IN THE MEMORANDUM IN PLACE OF OR AS WELL AS IN THE ARTICLES.¹

(a) To purchase, feu, excamb, lease, hire, or otherwise acquire any estate, heritable or moveable, and without prejudice to such generality, any lands, property, buildings, servitudes, leases, rights, privileges, concessions, machinery, apparatus, plant, stock-in-trade of any kind necessary or convenient to the business of the company, and to erect, construct, lay down, enlarge, alter, and maintain any buildings, works, apparatus, and machinery necessary or convenient for the business of the company.

To acquire
property.

(b) To apply for, register, purchase, or otherwise acquire any patents, brevets or other rights for inventions, trade names,

To acquire
patent
rights.

¹ Reference is made to the General Notes upon the subject of these "Powers" Many of them are obviously inherent in trading companies, and the draughtsman in each case can determine how far the Memorandum should expressly contain them. Anticipating legislation to some extent, but treating the construction of the Third Clause of the Memorandum so as to differentiate powers from objects, a convenient style is to set out the objects of the company thus:—"To carry on in the United Kingdom or elsewhere the business and trade of manufacturers and sellers of all kinds of lace goods and to carry on any other business or trade similar or analagous thereto that can be conveniently carried on by the company or may seem to the company calculated directly or indirectly to enhance the value of any of its assets, properties or rights," and then to add such of the "power" clauses as may be desired with the introductory words: "and for the purpose of and in aid of such objects:—(a) To purchase, &c." Companies have been registered with Memoranda in this form, and alterations on Memoranda on the suggestion of the Editor upon such lines have been sanctioned by the Court of Session.

Form No. 1. trade marks, copyrights, licences, concessions, or other similar grants or rights, or any secret or other information as to any invention or process, matter, or thing which may seem capable of being used for any of the purposes of the company, or the acquisition of which may seem calculated directly or indirectly to benefit the company; and to use, exercise, develop, or grant licences in respect thereof; or otherwise to sell, dispose, or turn to account the property, rights and information so acquired.

Public or
Private
Company.

Appendix C.

To acquire
other
businesses,
make profit
sharing
arrange-
ments, &c.

(c) To acquire the whole or any part of the business, good-will, and assets of any person, firm, or company carrying on or proposing to carry on any of the businesses which the company is authorised to carry on, and as part of the consideration for such acquisition, to undertake all or any of the liabilities of such person, firm, or company, or to acquire an interest in or enter into any arrangement for sharing profits, or for co-operation, or for limiting competition, or for mutual assistance, or for union of interests with any such person, firm or company; to give or accept by way of consideration for any of the acts or things aforesaid, or for any property acquired, any shares, debentures, debenture stock, or securities that may be agreed upon; and to hold and retain, or sell, mortgage, and deal with any shares, debentures, debenture stock, or securities so received.¹

To
amalgamate.

(d) To amalgamate with any person, firm, or company whose objects are within the objects of the company, and that either by sale of the whole business property and assets of the company, subject to its liabilities or by purchase of the whole business

¹ Amalgamation is sometimes expressly provided for in such a clause or as found more specifically in clause (d). But in consequence of *John Walker & Sons*, 1914, S.C. 280, its *intra vires* character is doubtful. A company may sell a branch business for shares in another company under powers embracing "union of interest or amalgamation" and provide for working capital by taking debentures or shares. *William Thomas*, 1915, 1 Ch. 325. The power of sale of a company's whole assets without a concurrent scheme for its liquidation in the Memorandum is disapproved, and such a power is not judicially given in Scotland under an application to alter the Memorandum. *Macfarlane Strang*, 1915, S.C. 196. It is, however, difficult to follow the Scottish decisions. In *Macfarlane, Strang, supra*, the Court, while refusing a power of sale *simpliciter*, confirmed substantially the same power under the power to amalgamate. In *Aberdeen Steam Navigation*, 1919, 1 S.L.T. 249, the Court refused confirmation of the power to amalgamate in similar circumstances. The English practice is otherwise. See *Marshall, Sons*, 1919, W.N. 207. Business arrangements on the basis of mutual agreements are not open to objection, and, indeed, no express power to enter into them appears to be necessary.

property and assets of such other company; and that with or without winding up either company or by sale or purchase of all the shares, stock, or securities of the company, or any such other company as aforesaid, or by partnership or by an arrangement of the nature of partnership, or in any other manner.¹

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Private
Company.

Appendix C.

(e) To establish or promote or concur in establishing or promoting any other company, for all or any of the objects mentioned herein, or likely, directly or indirectly, to assist or benefit the company or to enhance the value of any property or rights of the company, and to transfer to any such company any property, assets, or rights of the company, and to take or otherwise acquire and hold shares, stock, debentures, debenture stock, or other securities in or of any such company, and to subsidise or otherwise assist any such company, and to sell, hold, re-issue, with or without guarantee, or otherwise deal with such shares, stock, or securities, and to guarantee or underwrite subscriptions for any shares, stock, or securities of any such company, and to subscribe for the same or any part thereof, and upon a distribution of assets or division of profits, to distribute any such shares, stock, or securities amongst the members of the company in specie.²

To promote
other
companies.

(f) To subscribe for, take, purchase, or otherwise acquire and hold shares, debentures, debenture stock, or other interest in or

To subscribe
for shares in
other
companies.

¹ This clause is taken from the clause confirmed by the Court in *Macfarlane, Strang*, 1915, S.C. 196. The Court refused a similar clause in *John Walker & Sons*, 1914, S.C. 280, upon the ground that such a power of amalgamation was *ultra vires* of the original Memorandum. The fact that the Memorandum in *Macfarlane, Strang*, *supra*, originally contained a power to amalgamate does not appear a convincing distinction. In both cases power expressly to sell the whole assets was refused under applications to alter the existing Memorandum. It is not easy to appreciate the logic of this position. The Scottish Courts have laid down principles at variance with English practice in these matters. So long as the rights of dissentients are safeguarded, companies ought to have complete freedom of action in disposing of their business or assets, partially or entirely. The authority of *Macfarlane, Strang*, *supra*, is now gone in consequence of the declinature of the Court to follow it in *Aberdeen Steam Navigation*, 1919, 1 S.L.T. 249. So long as English companies take power to sell or amalgamate with the approval of the Chancery judges, it may be assumed that Scottish practitioners in framing Memoranda will adopt the same course, keeping in view that the sale of a company's whole assets under the guise of an amalgamation scheme can only be effected by or through the process of liquidation.

² See note to sub-clause (d).

Form No. 1. securities of any other company having objects altogether or in part similar to those of the company, or carrying on, or about to carry on any business capable of being conducted so as directly or indirectly to benefit the company.

Public or
Private
Company.

Appendix C.

To pay in
shares for
rights
acquired.

(g) To pay for any business, undertaking, property, or rights, heritable or moveable, or services acquired by or rendered to the company, either in cash or shares, with or without preferred or deferred rights, in respect of dividend or repayment of capital or otherwise, or by debentures, with or without a charge upon the property, rights, and assets of the company (including uncalled capital), or any part thereof, or partly in one mode and partly in another, and generally on such terms as the company may determine.

To accept
payment in
shares for
assets sold.

(h) To accept payment for any rights or assets or property sold or otherwise disposed of or dealt with by the company, either in cash, by instalments, or otherwise, or in shares of any company or corporation, with or without deferred or preferred rights in respect of dividend or repayment of capital or otherwise, or by means of any security or mortgage of any person, firm, company or corporation; or partly in one mode and partly in another; and generally on such terms as the directors or the company may determine.

To invest
moneys.

(i) To invest and deal with the moneys of the company, not immediately required, upon such securities, including personal security, other than the shares of the company, and in such manner as may from time to time be determined [and that free from the restrictions imposed by statute upon the investment of trust funds]; to receive deposits of money to be employed in the business [or businesses] of the company; and to lend and make advances, either with or without security, to any company, firm, or person, and in particular to lend and advance money to companies, firms, or persons owning or engaged in carrying on any business connected with that of the business of the company, or to others being customers of or having dealings with the company, upon such terms as may be thought proper, and to guarantee the payment of any sum or sums of money or the performance of contracts or obligations of any kind.

To sell whole
assets.

(j) To sell or otherwise dispose of the whole property, rights, and assets of the company, or any part thereof, for such consideration as the company may think fit, and, in particular, for

cash, shares, stock, debentures, debenture stock, securities, or property or assets of any other company constituted or to be constituted, having or not having objects similar, or in part similar, to those of the company.¹

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Private
Company.

(k) To borrow or raise money by the issue or execution of bonds and dispositions in security, dispositions or assignments, *ex facie* absolute or in trust, debentures, mortgages, charges, or other securities of or over all or any part of the assets and property of the company, heritable or moveable, including its uncalled capital, or by the issue of or upon bills of exchange, promissory notes, bills of lading, warrants, or other obligations of or in favour of the company, or by the creation and issue of debenture stock or in such other manner as the company may resolve²

Appendix C.

To borrow.

(l) To improve, cultivate, develop, or open up for building or otherwise, mortgage, charge or otherwise affect by granting any rights and privileges thereover or sell, feu, dispose of, or otherwise deal with all or any part of the property of the company

To improve
and develop.

¹ For many years it had been the practice to insert a clause in the Memorandum enabling the company to sell its whole "undertaking" for cash, shares, debentures, debenture stock, or any other consideration. The effect of this clause enabled companies to reconstruct without having recourse to a winding-up, and free from the restrictions imposed by section 192 of the Act. It was decided, however, by the Court of Appeal in *Henderson's Transvaal Estates*, 1908, 1 Ch. 743, that the sale of the whole "undertaking" of a company and the division of the proceeds amongst the members cannot be a corporate object, and that a clause in the Memorandum conferring such a power is ineffectual to exclude the operation of section 192. The decision seems to be limited to the case of sale for other than a cash consideration, *e.g.*, shares in another company. The distribution of such *specie* assets involves the process of winding-up. In such a case members cannot be deprived of the protection of section 192. Whatever the precise effect of the decision in question may be, it is settled, so far at anyrate as Scotland is concerned, that when no such power is taken in the Memorandum, the Court will refuse to confirm an alteration of the Memorandum to the effect of including such a power. Such an alteration, according to *John Walker & Sons*, 1914, S.C. 280, is not within the contemplation of section 9 of the Act.

² Power to borrow is implied in a trading company. Express provision need not be made for it in the Memorandum, but it is convenient to have such provision made for it in the Articles in order to satisfy lenders. If a Stock Exchange quotation is likely to be required, it is desirable to enquire whether any limit ought to be imposed upon the extent of the borrowing power.

Form No. 1. for such consideration as the company may think fit, and, in particular, for cash, shares, stock, bonds, mortgages, debentures, debenture stock, or securities of any other company having objects altogether or in part similar to those of the company.

Public or
Private
Company.
Appendix C.
To draw bills.

(m) To draw, make, accept, indorse, discount, execute, and issue bills of exchange, bills of lading, promissory notes, warehouse, dock, and other warrants, and other instruments, so as to be negotiable or transferable by delivery or to order or otherwise.¹

To insure.

(n) To insure against fire or other risks any of the company's property; to join mutual insurance, indemnity, or protection associations; and to insure against claims for compensation to servants, workmen, or other persons, by mutual insurance or otherwise, and to pay the premiums on all such insurances.²

To establish
reserve fund.

(o) To establish and provide sinking and reserve funds for redemption or payment of obligations and liabilities and shares of the company.³

To
remunerate
by shares.

(p) To remunerate any person, firm, or company rendering services to the company, either by cash payment or by allotment to him or them of shares or securities of the company credited as paid up in full or in part or otherwise.⁴

¹ A company cannot issue, accept, or otherwise deal in bills or other negotiable instruments, unless the power to do so is expressly given in the Memorandum, or can be implied from its terms, or from the nature of the company's business; but there are few mercantile companies to which such a power is not implied from the commercial necessities of their business. See sections 16 and 77 of the Act.

² This power, although obviously implied, is frequently inserted. Care must be taken to obviate the semblance of taking power to carry on assurance business where the company is not registering itself as an assurance company under the Assurance Companies Act, 1909. Where there is doubt, the Registrar may insist upon the addition of a proviso, e.g., "Provided that nothing in this clause shall empower the company to carry on the business of assurance or to grant annuities within the meaning of the Assurance Companies Act, 1909, or to re-insure any risks under any class of assurance business to which that Act applies." Similarly, notwithstanding section 294 of the Act, where any proposed power is suggestive of the registering company becoming a trade union, the Registrar may insist upon an appropriate proviso. See *Company Law and Practice*, p. 3.

³ See Article 99 of Table A and *Company Law and Practice*, p. 479. It is clear that the power to establish reserve funds and to deal with the investment thereof, may be properly found in the Articles.

⁴ It does not seem necessary to take power in the Articles to effect this purpose.

(q) To obtain any Provisional Order, Act of Parliament, or licence of the Board of Trade or other Authority for enabling the company to carry out its objects or for effecting any alteration in or modification of its constitution or for any other purpose which may seem expedient, and to oppose any applications to Parliament or any Government, Authority, Commission, or Department calculated directly or indirectly to prejudice the company's interests.¹

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Private
Company.

Appendix C.

To promote
parliamentary
measures,
&c.

(r) To enter into any arrangement with any Government or Authority, supreme, municipal, local, or otherwise, or any corporation, company, or person that may seem conducive to the objects of the company or any of them, and to obtain from any such Government, Authority, corporation, company, or person, any charter, contract, decree, right, privilege, and concession which the company may think desirable to obtain, and to carry out, exercise, and comply with any such arrangement, charter, contract, decree, right, privilege, and concession.²

To make
arrangements
with adminis-
trative
authorities.

(s) To govern any territories in or elsewhere under the control of the company, and to make and enforce such laws and ordinances as may seem expedient, and to provide for the administration of justice, and for the establishment and maintenance of good order, and for the welfare of the natives and other inhabitants.

To make ad-
ministrative
regulations.

(t) To establish and maintain, or assist in establishing and maintaining benefit societies and clubs, or otherwise to provide for the material or moral welfare of persons, and the wives and families of persons either presently or formerly in the employment of the company, or of any business acquired by the company, and to grant pensions and allowances, and to make payments towards insurance for the benefit of such persons and their wives and families, and, generally, to establish, manage, subscribe to, or otherwise aid or support schools, places of recreation, hospitals, infirmaries, dispensaries, charitable, educational, national, or other institutions, objects, or undertakings which shall have any moral or other claims to support or aid by

To subscribe
to charities,
&c.

¹ This power is only appropriate to very large companies, and assuming a company sanctions proceedings of the nature contemplated in the power, by special or extraordinary resolution, the directors do not require, it is thought, to have the express power to take them in the Memorandum.

² Clauses (q), (r) and (s) may be omitted in the case of the ordinary company.

Form No. 1. the company by reason of the locality of their operations, or otherwise, and to subscribe and guarantee money for exhibitions and other public objects.¹

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Private
Company.

Appendix C.

To establish
colonial, &c.,
registers.

(u) To establish a register of members in any colony, dependency, or country in which the company carries on business.²

To procure
foreign regis-
tration.

(v) To register the company or procure it or any allied, or subsidiary, or substituted company, to be registered, recognised, established, or authorised to carry on business in any part of the world.²

To establish
agencies.

(w) To establish agencies and appoint attorneys in the United Kingdom and abroad for the purpose of the Company.³

To pay
brokerage,
&c.

(x) To pay brokerage and commission on shares, stock, debentures, debenture stock, or others of the company placed by brokers or by persons subscribing, or agreeing to subscribe, whether absolutely or conditionally, for the same, or procuring, or agreeing to procure subscriptions, whether absolute or conditional, for the same, and to remunerate any person or company for services rendered, or to be rendered in placing any shares, stock, debentures, debenture stock, or others of the company, or in relation to the establishment of the company, or of any company promoted by the company.⁴

To pay
formation
charges, &c.

(y) To pay all [printing, legal and other] costs, charges and expenses incidental to or connected with the formation and incorporation of the company, and purchase of the assets acquired or to be acquired for the purposes of the company, and carrying

¹ This clause or a clause in similar terms is useful, but without it the company in general meeting can always approve of gifts of the nature here expressly provided for. See *Company Law and Practice*, p. 460.

² These paragraphs should only be inserted in the case of companies formed or likely after formation to do colonial or foreign business. It is not in any case essential to have the power inserted in the Memorandum to establish such registers. The statutory place is in the Articles. See section 34 of the Act as regards colonial registers.

³ This paragraph is obviously superfluous. It is necessarily implied in any event under the general power to do everything incidental to the attainment of the company's objects.

⁴ Section 89 of the Act expressly indicates that the authority to pay commission should be found in the Articles. The company requires no express power to pay brokerage in the Memorandum or in the Articles. See *Company Law and Practice*, p. 180. This clause can therefore be omitted.

any of its objects into effect [and to make all proper payments and allowances in relation thereto, and to adopt all acts and preliminary arrangements in reference to the same.]¹

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Company.

(z) To distribute among the members *in specie* any property or assets of the company, or any proceeds of sale, or disposal of any property or assets of the company, and in particular, any shares, debentures, debenture stock, or securities of other companies, belonging to the company, or of which the company may have the power of disposing [but so that no distribution amounting to a reduction of capital be made except with the sanction (if any) for the time being required by law].²

Appendix C.

To make *in
specie* distri-
bution.

(aa) To modify from time to time, by special resolution, the conditions contained in this Memorandum so as to increase the share capital of the company by the issue of new shares of such an amount as may by the company be thought expedient, or to consolidate or divide the share capital into shares of larger or smaller amount than the amount hereby fixed, or to convert the paid-up shares into stock, or to reduce the share capital to such an extent, and in such a manner as may by resolution be determined.³

To alter
memorandum
share capital
conditions.

(bb) To alter from time to time all or any of the Articles of Association of the Company [so far as such alteration is competent].⁴

To alter
articles.

¹ The parts within parenthesis are comprehended in the general words and can be omitted. The company can pay these charges without any provision therefor in the Memorandum. See Article 71 of Table A.

² As to this power, section 186 (1) of the Act is important, but again it directs that the Articles form the proper place for making any provision so far as a winding up is concerned as to the method of distribution of a company's property. Where funds are distributed while the company is a going concern, this may or may not involve reduction of share capital, but if the Articles authorise reduction, that is sufficient, subject to fulfilment of the statutory requirements. The proviso, within brackets, seems unnecessary unless as a sort of tutelary warning that the statutory restrictions in regard to reduction must be observed.

³ Again, this is an instance of undue elaboration. It is intended as a reflex of sections 41, 45 and 46 of the Act, but the authority for the exercise of every one of the powers referred to in those sections is directed to be found in the Articles unless in the case of reorganisation of share capital under section 45 for which the authority is a special resolution without the necessity for any prior power in the Articles.

⁴ This clause is frequently inserted, but it is plainly unnecessary. Subject to the provisions of the Act, and to any conditions contained in its Memorandum, a company may by special resolution alter or add to its Articles. See section 13 of the Act and *Company Law and Practice*, p. 27, *et seq.* "So far as such alteration is 'competent'" is always implied and when expressed it gives no guidance.

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MEMORANDUM OF ASSOCIATION.

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Private
Company.

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Appendix D.

APPENDIX D.

VARIATIONS OF STATUTORY FORM OF "OBJECTS" CLAUSE IN REGARD TO GENERAL ANCILLARY PARAGRAPH.¹

To carry on any manufacturing process or branch of manufacture or business that may be conveniently combined or managed along with any of the businesses before specified, or that may tend to their expansion, development, or success ;

or

To carry on the manufacture of any other instruments, apparatus and machinery of a nature similar or cognate to the foresaid instruments, apparatus and machinery, or capable of being developed therefrom by new inventions, or of being conveniently or profitably carried on in conjunction with the business of the company ;

or

To buy, sell, manufacture or deal both wholesale and retail in articles, materials, commodities and produce of all kinds, useful

¹These specimen forms do not truly enlarge the statutory form, viz.:—"and the doing all such other things as are incidental or conducive to the attainment of the above object." See notes on sub clause (4) of "Objects" Clause. Some may prefer to combine one or more of these paragraphs as additional "powers" in the Memorandum. The statutory form of words "the doing all such other things as are incidental," &c., generally concludes the recital of the "objects" or "objects" including "powers" of the company. No reliance should be placed on a power to carry on any other business not in some way connected with the main business of the company. The proper way to ensure the validity of a company engaging upon business foreign to its leading objects is to have the "Objects" clause altered under the sanction of the Court or to reconstruct.

or necessary, or which can be conveniently dealt in by the company in connection with any of its objects;

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or

To carry on any other business or trade of the same or of a different nature which the company may consider desirable to be carried on in connection with its said business;

Appendix D.

or

To do all or any of the above things in any part of the world, and as principals, agents, contractors, trustees, or otherwise, and by or through trustees, agents, or otherwise, and either alone or in conjunction with any other person, firm, or association, and to contract for the carrying on of any operation connected with the company's business by any person, firm, or other association;

or

To do all such other things as are incidental or conducive to the attainment of the above objects, or any of them. [And it is hereby declared that the word "company" in any of the paragraphs of this clause, except where used in reference to this company, shall be deemed to include any partnership or other body of persons, whether incorporated or not, and whether domiciled in the United Kingdom or elsewhere. And it is hereby further declared that the object or each of the objects specified in each of the paragraphs of this clause shall be considered as an independent object, and shall be in nowise restricted by reference to or inference from any other part of the same paragraph, or to any other paragraph of this clause or the name of the company.]¹

¹ See *John Brown*, 1914, 84 L.J. (Ch.) 245; *Crown Bank*, 1890, 44 Ch.D. 634, and notes on sub-clause (4) of "Objects" clause, Form No. 1, p. 9. This last variation with reference to the bracketed portion is not recommended.

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Appendix E.

MEMORANDUM OF ASSOCIATION.

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APPENDIX E.

VARIATIONS OF "SHARE CAPITAL" CLAUSE OF MEMORANDUM.

V. The share capital of the company is £ , divided into shares of £ each, with such rights as are defined by the Articles of Association of the Company; and with power, subject to the provisions of the Companies (Consolidation) Act, 1908, or any statutory modification thereof, to increase or reduce share capital, and to consolidate, subdivide, or otherwise deal with the shares forming the share capital, and to convert paid-up shares into stock. The shares forming the capital (original, increased or reduced) may be divided into such shares with such liens, preferences, and other special incidents, and held on such terms as are specified in the Articles of Association of the company, or as the Company may from time to time determine in accordance with the said Act.¹

or

V. The share capital of the company is [£120,000], divided into [40,000] preference shares of [£1] each and [80,000] ordinary shares of [£1] each with such respective rights as are defined by the Articles of Association of the Company and with power to increase or with the sanction necessary by law to reduce the capital and to divide the shares in the capital for the time being into several classes and to attach thereto respectively any preferential,

¹ This is a common form, but, as already pointed out, power to increase or reduce capital depends on power being taken in the Articles and not in the Memorandum for its effective exercise. To refer to the Articles as "registered herewith" as is sometimes done may give rise to litigation. The company cannot be disabled from altering the Articles. In reference to the matter of consolidation or division of shares in the sense of Section 45 of the Act, see the note to Article 56 of Articles for Public Company, Form No. 2, p. 83.

deferred, qualified, or special rights, privileges, or conditions, but so that the preferential rights attached by the said Articles of Association to the preference shares in the original share capital shall not be prejudiced or affected except as set forth in the said Articles of Association registered herewith.¹

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Appendix E.

or

V. The share capital of the company is [£300,000], divided into [5000] preference shares of [£20] each, and [20,000] ordinary shares of [£10] each with the right in respect of the said preference shares, which are subject to the provisions with regard to the preference share capital contained in the Articles of Association, to a fixed cumulative preferential dividend at the rate of [6] per centum per annum on the capital for the time being paid up thereon, and to priority over the ordinary shares in repayment of capital. The share capital of the company may from time to time be increased or reduced, and any increased capital or any part thereof may be issued with such a preferential dividend, or preferential right in any repayment of capital, or both, or with such deferred dividend, or postponement in any repayment of capital, or both, and generally on such conditions and terms and subject to such restrictions and limitations, as may by resolution be determined, but no increased capital shall as regards either dividend or capital rank preferably to, or *pari passu* with, the said original preference shares, without the special consent of the holders of said preference share capital as provided in the said Articles.²

or

V. The share capital of the company is [£250,000], divided into [50,000] shares of [£5] each, convertible, as and when from time to time fully paid up, into preference stock and ordinary stock, in the proportion of three-fifths preference stock and two-fifths ordinary stock, and such preference stock, as and when created, being entitled to a fixed cumulative preferential dividend, at the rate of [4½] per centum per annum, and ranking in priority to the ordinary stock in repayment of capital, and being subject to the other provisions with regard thereto con-

¹ See note to prior variation.

² "Cumulative," although very common, does not add virtue to "preferential". Except as assuring the investor by its emphasis, it is unnecessary in law to the creation of a right of priority over all the profits of every year in securing full payment of a preference dividend. See *Ferguson & Forrester*, 1920, 1 S.L.T. 84, and *Company Law and Practice*, p. 477 et seq.

Form No. 1. tained in the Articles of Association of the company, and the said share capital may from time to time be increased, and any increased capital or any part thereof may be issued with such preferential dividend, or preferential right in any repayment of capital, or both, or with such deferred dividend, or postponement in any repayment of capital, or both, and generally on such conditions and terms and subject to such restrictions and limitations as may be determined in accordance with the said Articles of the company.¹

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or

V. The share capital of the company is [£240,000], divided into [200,000] preference shares of [£1] each, and [200,000] ordinary shares of [4s.] each.

The preference shares shall be entitled to a fixed cumulative preferential dividend of [five] per cent. per annum upon the amount paid up thereon from time to time.

The surplus profits of each year available for dividend, and remaining after paying the said dividend upon the preference shares for such year, together with any arrears or deficiency of dividend on such preference shares shall be divisible one-fifth thereof among the holders of the preference shares in proportion to the number of these shares held by them respectively, and that whether the same be fully paid up or not, and four-fifths thereof among the holders of the ordinary shares according to the amount paid up thereon.

The preference shares shall also be entitled to priority over the ordinary shares in repayment of share capital, and the remaining assets, after repayment of the preference share capital, together with any arrears or deficiency of dividend thereon, shall be divisible one-fifth thereof among the holders of the preference shares in proportion to the number of these shares held by them respectively, and that whether the same be

¹It is unnecessary to refer to the Articles of the Company "for the time being" as that is implied. For "in accordance with the said Articles" some prefer to substitute "by special [or extraordinary, or as the case may be] resolution of the company." It is unnecessary in the Memorandum to take powers to convert the share capital into stock or to increase the share capital. The Memorandum cannot legally give these powers; they must be specifically contained in the Articles. See section 41 of the Act. So, elaboration of the Memorandum under this branch is generally more for the purpose of notifying the line of policy to be adopted by the particular company, and for supporting prospectus issues of share capital.

fully paid up or not, and four-fifths thereof among the holders of the ordinary shares according to the amount paid up thereon.

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The distribution of both the profits and the assets remaining after repayment of the preference share capital, if and so long as the number of preference shares issued and subscribed shall be not more than 160,000, shall be allocated upon the basis of four-fifths of the said one-fifth of profits and the remaining assets declared to be divisible among the holders of the preference shares being paid to them, and the remaining fifth of the said one-fifth shall be divided among the holders of the preference and ordinary shares, in the proportions of one-fifth thereof to the former and four-fifths thereof to the latter.

The share capital may from time to time be increased, and any increased capital or any part thereof may be issued with such a preferential dividend or preferential right in any repayment of capital, or both, or with such deferred dividend, or postponement in any repayment of capital, or both, as the company shall think expedient, and generally on such conditions and terms and subject to such restrictions and limitations as may by resolution be determined.

No preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class, and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class.¹

or

V. The share capital of the company is [£20,000] divided into [8000] cumulative preference shares of [£1] each and [12,000] ordinary shares of [£1] each. The said preference shares shall carry the right to a fixed cumulative preferential dividend at the rate of [5] per cent. per annum on the capital for the time being paid up thereon respectively, and shall rank, both as regards such dividend and as regards capital, in priority to

¹ Where the Memorandum makes elaborate provision for preferential rights as in this style, any future alteration of these rights becomes a matter of difficulty. The style is given as one to be avoided rather than followed. See General Notes and also notes to the Fifth clause of the Memorandum in Form No. 1.

Form No. 1. all other shares in the capital, but shall not confer any further right to participate in profits or assets.

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Appendix E.

The capital may be reduced or increased or divided, and any increased capital, or any part thereof, and any capital for the time being unissued, original, or otherwise, may be issued at a premium, and with such a preferential or guaranteed dividend or preferential or guaranteed right in the distribution of the assets of the company, or both, or with such deferred dividend or postponement in the distribution of the assets of the company as the company shall think expedient.

No preference or special privilege attached to or belonging to any class of shares so far as then issued shall be interfered with except with the consent in writing of the holders of three-fourths of the then issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the then holders of the shares of that class, to which separate general meeting the provisions of the Articles for the time being of the company relating to general meetings shall, *mutatis mutandis*, apply, but so that the necessary quorum shall be two persons at least, holding or representing by proxy, one-third of the then issued shares of that class.¹

¹ This variation is an instance of making the Memorandum conditions unalterable with regard to the rights of privileged shareholders, except under the stringent provisions in the Clause or by an arrangement or compromise under section 120 of the Act. See General Notes and also notes to the Fifth Clause of the Memorandum in Form No. 1.

SECTION II.

ARTICLES OF ASSOCIATION.

I.—PUBLIC COMPANY, LIMITED BY SHARES.

TABLE A NOT ADOPTED.

Form No. 2.

GENERAL NOTES.

THE Articles of Association form the bye-laws of the company. The Memorandum of Association is its charter or constitution. Articles :
purpose.

Under section 11 of the Act it is provided that the Regulations of Table A shall apply to a company limited by shares and registered after the commencement thereof in cases, very rare, where Articles are not registered, and also in cases where Articles are registered in so far as these do not exclude or modify them, and in so far as they are applicable to the company so registered. Table A.
Regulations.

It is the more general practice where separate Articles are registered to exclude the Regulations of Table A *in toto* in preference to the inclusion of Articles with provisions in modification of the Articles of Table A. The recent case of *R. Paterson & Sons*, 1916, S.C. 452 ; 1917, S.C. (H.L.) 13, appears to show the wisdom of the general practice. In that case, Table A was made to apply "only in so far as they [the regulations] are not excluded, altered, or modified by the following provisions." Article 99 of Table A, providing for the creation of a reserve fund, was held by implication to form no part of the company's Articles in consequence of a special Article providing for the division of profits in a manner inconsistent with Article 99. It is desirable to avoid all questions of this nature by having clean cut Articles, and this can only be effected by adopting Table A *simpliciter*, or by Articles specially framed. Form No. 2, here supplied, is based upon the total exclusion of Table A. In special Articles, many of the Regulations of Table A may be, for that matter, incorporated *verbatim* ; but the advantage of this method is that it gets rid of difficulties such as *R. Paterson & Sons*, *supra*, disclosed. Exclusion of
Table A :
practice.

In order that the practitioner may have before him, as it were, the statutory model code, the relative clauses of Table A are printed in smaller type. It is thought that the profession will find this of Table A :
comparison
purposes.

General
Notes.Articles of
Association :
Public
Company.

great convenience. It will be seen at a glance how far Form No. 2 follows or differs from Table A. For convenience, also, an index is given in the Contents of the Articles of Table A and of the pages upon which the Articles of Table A are found throughout Form No. 2, as, for the purposes of Form No. 2, they are not printed in sequence in all cases.

Printing, &c.

Section 12 of the Act requires the Articles to be printed and numbered consecutively. The Memorandum is invariably printed also.

Fundamental
Article.

The first Regulation of Table A is headed "Preliminary," and it is an Interpretation clause. In companies with Articles not adopting Table A, it is common to provide in the introductory Article under the heading of either "Preliminary" or "Constitution" that the regulations of Table A shall not apply, and to make "Interpretation" the subject of another Article. The Editor prefers the form given under the heading "Constitution," and he is aware that many Scottish companies have adopted it in this particular. It is not a style familiar to English solicitors, but it appeals to the draughtsman as an improvement upon Table A and as more logical. The company's constitution must be found, of course, in the Memorandum of Association, and Form No. 2 notes this point, frequently omitted by oversight. It is common to find a statement in the initial Article to the effect that the Regulations of Table A shall not apply to the company except in so far as the same are contained or repeated in the Articles. But this drafting is obviously objectionable where the intention is to provide a series of bye-laws independent of Table A, although the series may practically embody in many particulars the same Articles as are found in Table A. Such drafting paves the way for trouble. See *R. Paterson & Sons, supra*. It is preferable to exclude the Regulations of Table A by express provision although many of the Articles of Table A may be incorporated in the Articles adopted by the particular company. It is also superfluous to declare that the Articles are subject to repeal, alteration, or addition. The Act provides for their amendment by section 13. Subject to the general law, statutory or otherwise, to the passing of a Special Resolution and to the conditions of the Memorandum being observed, there is no limit to the extent of such alterations. New Articles altogether, *e.g.*, can be substituted for existing Articles.

Specification
in Memorandum
and
Articles.

It is the practice to make the Memorandum, perhaps, unnecessarily prolix. The Articles are not, however, liable to adverse criticism in this respect, because comprehensive bye-laws are advantageous in the administration of the company. Large companies in particular frequently provide in their Articles, *e.g.*, for the discharge of detailed statutory duties of directors and other officers so that the risk of neglect or omission by their officers of such duties may be lessened; and, with more appropriateness, their powers are sometimes also set out in the

Articles in great detail in place of, or, perhaps as well as in, the Memorandum of Association. The Editor refers to his General Notes upon the Memorandum of Association. The draughtsman will keep in view that in the case of a company—public or private, limited by shares—there is no substantial difference in the form of the Memorandum. The Articles may vary considerably, and in the case of a private company, the Articles must contain certain statutory restrictions not imposed upon public companies. As to these restrictions, the draughtsman is referred to the General Notes upon Form No. 4 of Articles of Association dealing with private companies.

It is sometimes convenient to have an “index” or “contents” table of the clauses in the Articles and, if desired, of the Memorandum; but this is a matter easily arranged with the printers. The index of Table A as set out in the Contents may be found useful in this connection.

General
Notes.

Articles of
Association:
Public
Company.

Index.

ARTICLES OF ASSOCIATION
OF
PUBLIC COMPANY LIMITED BY SHARES.
TABLE A NOT ADOPTED.

Form No. 2.

THE COMPANIES ACTS, 1908 TO 1917.¹

[PUBLIC] COMPANY LIMITED BY SHARES.

ARTICLES OF ASSOCIATION
OF
THE COMPANY, LIMITED.

CONSTITUTION.²

1. [*Name of Limited Company or The Company*] is established by its Memorandum of Association as a company limited by shares in accordance with and subject to the provisions of the Companies (Consolidation) Act, 1908, [*or The Companies Acts, 1908 to 1917*] and subject to the provisions of these Articles, and under the declaration that the Regulations contained in Table A in the First Schedule to the said Act shall not apply to the company [*or are hereby excluded*].

¹ It is the practice to give this somewhat illogical citation. The Companies Act, 1913, in particular does not affect public companies. The Editor observes that close adherence is however not paid to this rule, and in England companies have been recently incorporated as under the Act of 1908 alone. The Board of Trade cannot insist upon the citation in question.

² In place of this Article No. 1 with this title, it is common to follow the form of Table A by commencing with the heading "Preliminary" an Article as follows:—

"1. The Regulations of Table A in the First Schedule to 'The Companies (Consolidation) Act, 1908,' shall not apply to this company." But the Article here suggested seems preferable, and has the merit of being informative.

2. No funds of the company shall be employed in the purchase of, or in loans upon the security of, its own shares.¹

Form No. 2.

Public
Company.

8. No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

Table A—8.

or

[2. The company shall not apply its funds, or any part thereof, in any purchase of or loan upon the security of its own shares, or in any investment subjecting it to unlimited liability, or in any investment in any shares involving liability which may remain uncalled for any period exceeding two years, or in the purchase of any shares by which, at the price paid therefor, its holding in any company, corporation, or undertaking in respect of such shares would exceed in amount [one-twentieth] part of its own total subscribed share and debenture capital combined, or [one-tenth] part of its own subscribed share capital for the time being, whichever is the greater.]²

Variation.

INTERPRETATION.³

3. In the construction of these Articles, unless the context otherwise requires, words importing the singular shall include

¹ If the Article under the heading of Constitution is preferred by the draughtsman, it is convenient and appropriate to insert under it the proviso against the company dealing in its own shares. It is Regulation No. 8 of Table A. While the purchase by a company of its own shares, unless justified by some exceptional circumstances, *e.g.*, as part of a scheme for reduction of capital or of arrangement, is *ultra vires*, apart from any express provision in the Articles, the Stock Exchange regulations must be kept in view. For the purpose of obtaining an official quotation, the London Stock Exchange Committee not only insist upon the Articles of the applicant company containing a prohibition against purchase, but also upon their prohibiting loans upon the security of its shares, although such transactions are not *ultra vires*. See the London and Glasgow Stock Exchange Rules printed in the Appendix. It may be taken that the rules of the Committees of other leading Stock Exchange centres follow similar lines. See *Company Law and Practice*, p. 433.

² In trust investment companies it may be desirable to restrict the power of investment by express provision, *e.g.*, by the Article here suggested or upon similar lines.

³ It is not absolutely essential to have an Interpretation clause, and in many Articles it does not appear. Words defined by the Act, *e.g.*, Special Resolution, Statutory Meeting, &c. must be construed as the Act directs. In adjusting Articles, care must be taken to see that the Articles are consistent with such a clause if inserted, and the words or

Form No. 2. the plural, and *vice versa* or importing the masculine gender shall include the feminine or importing persons shall include corporations, companies, governments, bodies, and firms of all kinds and words and expressions defined in the interpretation or other clauses of the Companies (Consolidation) Act, 1908, shall have the meanings so defined, and writing shall include printing, lithography and other usual substitutes for writing whether wholly of one or partly of two or all of these; and further the following words and expressions, unless the context otherwise requires, shall have the meanings hereby assigned to them namely:—

“Act” means The Companies (Consolidation) Act, 1908.

“Acts” means The Companies Acts, 1908 to 1917.

“Articles” means [and includes] these Articles [and all supplementary, amended or substituted Articles for the time being in force.]¹

“Board” and “Board Meeting” mean and include [the directors for the time being of the company and] such of the directors as shall be assembled at and sufficient to constitute a [quorum of the directors assembled or] board meeting in accordance with these Articles.

“Capital” means the share capital from time to time of the company.²

“Clear days” means the days intervening between and exclusive of the day upon which any act or notice shall have been deemed to have been done or served, and the day upon

expressions specially defined apply to the Articles of the particular company. If the Articles *e.g.* do not contemplate the conversion of shares into stock, the definition of shares will be omitted, or if the Articles refer to shares, *e.g.*, as “paid up or credited as paid up,” the definition of “paid up” will likewise be omitted. As to “clear days” see *Company Law and Practice*, pp. 125, 129, and Article 49 of Table A.

¹ The definition of Articles may be dispensed with as otiose. Further, “Articles” is an expression defined in the Interpretation section—285—of the Act, and for that reason, upon the scheme of this Article, it should not be here included. It is erroneous, in the Editor's view, to embrace the Memorandum under the expression “these Articles” or “these presents” or to include “any alterations or additions by special resolution.”

² In settling the Articles care must be taken to see that the Articles as a whole are consistent with this Interpretation clause, *e.g.*, “share capital” will not be used. The clause is somewhat full as illustrating the words generally specially interpreted, but many are unnecessary, and may like the Article itself in any form be dispensed with.

which the next result of such act or upon which such notice shall take effect or apply.¹

Form No. 2.

Public
Company.

"Company" means Limited.

"Directors" means the [whole] directors for the time being of the company [or a quorum of them, duly called and assembled in accordance with these Articles].

"Dividend" includes "bonus."²

"General meeting" means a meeting, whether ordinary or extraordinary, of the company, duly convened and constituted, or any adjournment thereof.

"Managing director" means the [subscriber, Robert Young, or his successor or successors in office for the time being, as] managing director or managing directors of the company.

"Member" means a person registered or entitled under the Memorandum of Association or these Articles to be registered as a holder of [preference or ordinary] shares of the company.

"Month" means calendar month.

"Office" means the registered office of the company for the time being.

"Paid up" includes "credited as paid up."³

"Register" means the register of members of the company to be kept in compliance with section 25 of the Act.

"Seal" means the common seal of the company in use for the time being.

"Secretary" includes any person appointed to perform temporarily the duties of secretary.⁴

"Share" means a share in the share capital of the company.⁵

"Special resolution" and "extraordinary resolution" mean respectively a special resolution and extraordinary resolution of the Company as defined by section 69 of the Act.

"Statutory meeting" means the first general meeting of the

¹ Where it is preferred to make the Article as to notices for general meetings exegetical of "clear days," this phrase will not be interpreted here. See Article 68 in this Form No. 2, p. 93.

² Cf. Article 143, p. 142.

³ Cf. Article 139, p. 139.

⁴ Some Articles provide by one of the Articles for the appointment of a particular individual as the first secretary, but it is not necessary to do so.

⁵ This is an expression defined in section 285 of the Act.

Form No. 2. members of the company to be held in compliance with section 65 of the Act.¹

Public
Company.

"Year" means calendar year.

Table A—1.

1. In these regulations, unless the context otherwise requires, expressions defined in the Companies (Consolidation) Act, 1908, or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.²

BUSINESS.

4. The business of the company shall be carried on by, or under the management of, the directors, subject only to such control of meetings as is provided for by these Articles, and the directors shall have regard to the restrictions imposed by section 87 of the Act upon the commencement of its business.

Table A—2.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 87 of the Companies (Consolidation) Act, 1908, if, and so far as, those restrictions are binding upon the Company.

5. [The company shall forthwith adopt an Agreement made between _____ and _____ as trustee for and on behalf of the company, dated _____ 1919; and the directors shall carry the said Agreement into effect] [*or* The directors shall forthwith carry into effect an Agreement made between _____ and the company, dated _____ 1919] with full power, nevertheless, from time to time, to agree to any modifications in the terms thereof; [and the said Agreement notwithstanding that its terms have been settled by the said _____ who is the promoter of and seller to the company under the said Agreement, and who has fixed the purchase consideration thereby expressed to be given by the company as the consideration he is willing to accept, and at which alone he is prepared to sell, shall be binding upon the company, and it shall not be subject to challenge or reduction upon the grounds that there is not and was not an independent board of directors or that no indepen-

¹ It seems unnecessary, unless a sort of *vade-mecum* is desired, to include this and other expressions defined in the Act.

² This Article is the introductory or preliminary Article of Table A.

dent valuation of the property and assets acquired by the company under the said Agreement has been obtained for the company; and the seller under the said Agreement shall not be liable to account to the company, or to any member of the company, for any profit by reason of any fiduciary relation to the company, or to any member of the company; and every member, present and future, joins the company on the basis of this Article [or every member, present and future, is deemed to have full notice of the contents of the said Agreement and to have agreed to all its provisions] [and further, any shares to be issued as fully paid under the said Agreement to any person subscribing the Memorandum of Association shall be held as discharging his obligation as such subscriber to take shares in terms of his subscription to the said Memorandum].¹

Form No. 2.

Public
Company.

or

[5. The directors shall as soon as possible after the incorporation of the company enter into the [Minute of] Agreement

Variation.

¹ It is common in recent practice to find that the Memorandum is silent in relation to the adoption of preliminary agreements out of which the objects proper of the company arise and to provide only for such adoption in the Articles. The Memorandum thus shows the permanent business only of the Company as its main object without reference to the creative machinery of the formation agreement. The practice has this further advantage in that it obviates any resort to the Court to alter the Memorandum where such an agreement (without provision therefor in the Memorandum) has been modified. The form of the Article here suggested also saves the necessity in such circumstances of convening the company in general meeting for the purpose of altering the Articles by special resolution in order to give effect to any proposed modification. The directors are empowered by the Article to agree to any variation. It is unusual now to have a preliminary agreement made with some one as trustee for the unformed company. See General Notes to the Memorandum. The declaration in this Article is designed to exclude all inquiry into promotion profits. It can easily be put to unscrupulous uses. Its insertion is apt to suggest, (contrary to the fact, it may be generally assumed), that concealment of some facts is necessary. Intending members are deemed to be familiar with the Articles before they apply for shares, and if they choose to become members with Articles in this form they have no remedy in face of such Articles after they discover deceit unless they can instruct something in the nature of a fraudulent conspiracy between the directors and the promoter. Sargant, J., in *Omnium Electric Palaces*, 1914, 1 Ch. 332, has expressed the view that "promoters cannot relieve themselves of the general equitable obligations recognized and enforced in *New Sombbrero Phosphate*, 1878, 3 A.C. 1218, by any astuteness in the "drafting of the regulations which they prepare for their company." Such Articles do not relieve promoters of the statutory duty of full disclosure in any prospectus or statement in lieu of prospectus. Where

Form No. 2. referred to in the Memorandum of Association, with such (if any) modifications and alterations as may be agreed upon [but if made before the Statutory Meeting, subject to its approval], [and it shall be no objection to the said [Minute of] Agreement or to any alterations thereon that the directors of Company, Limited, the first parties to the said [Minute of] Agreement, or any of them are the same as the directors of the company.]

Public
Company.

COMMON SEAL.¹

6. The company shall have a common seal [with power to alter the same at any time] and the directors shall provide for

promoters are satisfied that the formation of a company is formed upon lines that will stand investigation, it is suggested that the position is strengthened by the omission of Articles of this nature. See *Company Law and Practice*, pp. 151 *et seq.*; 160 *et seq.* The last clause in this Article may be useful where promoters have subscribed the Memorandum for a block of shares intended to be issued to them as fully paid; and in such a case, formal allotment, otherwise unnecessary, ought to be made and the contract constituting the title of such allottee ought to be filed in terms of section 88 of the Act. But, section 72 of the Act notwithstanding, the subscription of the Memorandum for more than the usual single share is not recommended. Promoters and directors can disclose in any prospectus the substantiality of the share holdings they have agreed to acquire. Table A has no Article authorising contracts for profit with directors. See *Republic of Bolivia Exploration*, 1913, W.N. 358.

¹The Article dealing with the seal is usually inserted among the later Articles, but it is thought that its more appropriate place is after the Articles setting out the Constitution and the Business of the company. Instead of the words "provide for the safe custody," &c., there may be substituted "place it in the charge of such official as they may appoint." If there be more than one secretary, the clause may run "or one of the secretaries" and if the secretaries are a firm or a limited company, special provision may be made as to countersigning in such cases. The direction to keep a record of deeds signed under seal is not a common provision but it seems prudent. The Minute Book of the company should provide this record either with or without a separate register of executed deeds. The "seal" Article, which is sometimes omitted, is framed in view of the provisions of sub-section (3) of section 76 of the Act incorporating section 56 of the Conveyancing (Scotland) Act, 1874. Although attestation of deeds by witnesses of the signatures of the directors and the secretary is not essential under this sub-section, it is common practice to conform to the general requirements of Scots Law in the matter of attestation, as if the deeds were executed by individuals. The innovation introduced by the Act of 1874 has found some favour, however, with not a few leading conveyancers in Scotland. See *Burns's Conveyancing Practice*, 2nd edition, 1904, p. 5. It is obvious that the practice of dispensing with witnesses may assist the perpetration of forgery.

the safe custody thereof, and the seal shall never be used, except by the authority of the directors previously given in pursuance of their resolution duly minuted and in the presence of at least [two] directors who shall, together with the secretary, subscribe every deed to which the seal is affixed, and a record of every deed sealed shall be kept by the secretary in a book to be provided for that purpose.¹

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Public
Company.

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Table A—76.

7. The company shall have power to use official seals under section 79 of the Act, in such foreign countries as the directors shall determine; and the directors shall have power to appoint any agents or committees abroad as duly authorised agents of the company for the purpose of affixing and using such official seals, and they may impose such restrictions on the use thereof as they shall think fit.

or

[7. The company may exercise the powers conferred by

Variation.

¹ The 76th section of the Act should be kept in view, and particularly the third sub-section dealing with the execution in Scotland of deeds on behalf of a company. That third sub-section provides for the use of the common seal with the subscription of two directors and the secretary and makes attestation by witnesses a matter of choice. The second sub-section provides that if the contract is made according to any of the alternatives of the first sub-section of that section, it shall be effectual in law. Occasionally, Article No. 6 of this Form provides for "two directors or one director and the secretary" as necessary for the execution of company deeds, but in the case of such a provision it will be proper to take the signature of one director only upon satisfactory explanations for the absence of the other director. It should be kept in view that the domicile of the maker or granter of a deed determines the formalities of execution, *e.g.*, a deed by an Englishman or by an English company may be validly executed by sealing simply. Mere sealing is, however, very rare. See *Wharton's Law Lexicon*, 12th Edition, 1916, p. 271. Similarly, it is sometimes not appreciated that deeds to operate in Scotland, *e.g.*, by English wives do not need the concurrence of their husbands as curators or administrators in law. Under English law, married women are not under curatory. They contract as if they were single.

Form No. 2. section 79 of the Act in regard to the use of an official seal and such powers are accordingly hereby vested in the directors.]¹
 Public
 Company.

OFFICE.²

8. The registered office of the company shall be in or at such other place as the directors may from time to time appoint.

[SHARE] CAPITAL AND SHARES.

9. The [share] capital of the company is £ , divided into [preference shares of £ each and ordinary] shares of £ each [with power to sub-divide, increase, or reduce by special resolution].³

¹ This Article may be omitted where foreign business is not contemplated. Of course, a company can grant a power of attorney for the transaction of special business abroad.

² Table A makes no provision in regard to the office of the company, but it is common in special Articles to do so. Section 62 of the Act makes the possession of a registered office imperative, and provides for notice of its situation and of any change therein being given to the registrar. See *Company Law and Practice*, p. 116 *et seq.* It is undesirable to specify the situation of the registered office without providing for its change by the directors from time to time; because otherwise, before any change could be made, the Articles would need to be altered by Special Resolution. The registered office of a Scottish company must be always in Scotland. It is impossible to remove it to England or Ireland except by the process of reconstruction. Conversely, the registered office of an English or Irish company cannot be removed out of England or Ireland. The chief seat or head office, as distinct from the registered office, of a Scottish company need not be in Scotland.

³ It is convenient to set out in the Articles the particulars of the share capital of the company, and to state where apposite, its division into different classes of shares; but it is not essential. The statutory place therefor is in the Memorandum. The words within parenthesis are sometimes added. But it is to be noted that while a special resolution is imperative by statutory direction in the case of sub-division or reduction of capital, increase of capital may be effected by an extraordinary or ordinary resolution of the company, or by simple resolution of the directors where the Articles so provide. See sections 41, 45, and 46 of the Act. Where there are shares other than Ordinary, *e.g.*, Preference or Deferred, the rights attached to them usually form the subject of a separate Article, as in the next Article, dealing with Preference shares. "Capital," if interpreted, as in Interpretation Article 3 in this Form, p. 50, will be employed here and throughout in place of "Share capital."

[PREFERENCE SHARES.]

Form No. 2.

[The preference shares of £ each, forming part of the [share] capital of the company, shall carry the right to a fixed [cumulative] preferential dividend at the rate of [six] per cent. per annum on the capital for the time being paid up thereon respectively, and shall as to dividend and capital rank in priority to the ordinary shares for the time being of the company, but shall not carry any further right to participate in the profits or assets of the company.]¹

Public
Company.

Variation.

10. The minimum subscription upon which the directors may proceed to allotment is seven shares [and in the case of the first allotment of any [share] capital offered to the public for subscription shall be not less than [2000 shares of £1 each or twenty per cent. of the share capital offered for public subscription], and although the whole of the [share] capital is not subscribed, the company may commence business, subject to compliance with this Article.²

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections eighty-five and eighty-eight of the Companies (Consolidation) Act, 1908, as may be applicable thereto.

Table A—5.

¹ Where there are preferential or other privileged shares, the Articles may be utilised for the determination of their rights in preference to the Memorandum. By this means, unless the Memorandum specially provides, the operations of the company in raising fresh capital on future occasions will be facilitated. As to the extent of the rights of holders of cumulative preferential dividend shares in the capital assets, see *United Lankat Plantations*, 1914, A.C. 11, *National Telephone*, 1914, 1 Ch. 755, and *Robertson, Sanderson*, 1917, 55 S.L.R. 88. See *Company Law and Practice*, pp. 13, 27 *et seq.*, 92. Notice is taken of Articles 3 and 4 of Table A in the notes upon Articles providing for modification of rights under Article 59 of this Form, p. 87. Preference Share certificates should bear on their face a statement of the Company's share capital and the conditions, both as to capital and dividend under which the shares are issued. See London Stock Exchange Rules printed in the Appendix. As to "cumulative," see note ², p. 41.

² Although section 85 of the Act provides that the minimum subscription may be fixed either in the Memorandum or the Articles, the Articles is the preferable deed for its inclusion. It is rare to find any provision for it in the Memorandum, unless in the case of the adoption of Table A *simpliciter*. Section 85 makes the insertion of a minimum subscription in the Articles of a public company, limited by shares, prudent in every case, and irrespective of public subscription offers; because, as a condition of the issue by the Registrar of the certificate

Form No. 2.Public
Company.

11. [Subject to the provisions contained in the agreement mentioned in Article [5] hereof with reference to the shares to be allotted in pursuance thereof], the allotment of shares and the terms and conditions thereof shall be at the discretion of the directors.¹

or

Variation.

[11. The shares shall be under the control of the directors who may allot or otherwise dispose of the same to such persons,

to commence business under section 87, an allotment of shares, subject to payment in cash, is assumed in all cases.

Sections 6 and 12 of the Act require the Memorandum and Articles respectively to bear the same stamps as if they were contained in "deeds." The stamp duty is 10s. upon each. It is correct to describe them as deeds according to Scottish conceptions. See *M'Gowan*, 1913, S.C. 991. "Deed" is a term of art in English law.

In Articles of reconstructed companies, where all the shares being issued are issued to members of old companies, and no shares are intended to be offered for public subscription, some difficulty is occasioned by the omission of any provision for such circumstances in sections 81, 85, and 87 of the Act, in regard particularly to the filing of the statutory declaration. The form prescribed in section 87 (1) (c) is inapposite. Careful provision for such circumstances ought to be made in the Articles for so many shares, *e.g.*, seven, as a minimum subscription being payable in cash, otherwise the whole share capital is deemed to be the minimum subscription other than what is issued or agreed to be issued as fully or partly paid up otherwise than in cash, and must be subscribed and paid to and received by the company to the required statutory amount of not less than 5 per cent. Agreements in reconstruction cases should provide for a cash payment equal to the minimum subscription, so that some member or members may apply for shares to be allotted for cash and sufficient to discharge the minimum subscription. Where provision is made in the Articles for a percentage of shares "offered to the public for subscription" to avoid altering the Articles with consequent delay, the Board of Trade instruct the Registrar to insist upon the filing of a formal prospectus of the issue of a nominal amount of the share capital before he grants his certificate under sub-section (2) of section 87 of the Act. In the case of a private company, a minimum subscription is inapplicable.

If no share capital is to be offered to the public for subscription, then in accordance with section 85, sub-section (7), the words "payable in cash" should be substituted for "offered to the public for subscription" in Article 10 of this Form.

¹ The directors are unrestrained in their discretion as to allotment of original share capital offered for subscription, except to the extent they are bound by express agreement, *e.g.*, with the seller or vendor. Article 42 of Table A provides for parity of treatment in the allotment of increased share capital, but the Articles can and often do provide for the uncontrolled discretion of the directors in regard to its allotment also. Directors, however, must act fairly and abstain from treating themselves preferentially. *Neal v. Quinn*, 1916, W.N. 223; *S. Mills*, 1920, 1 Ch. 77.

on such terms and conditions, at such times, and either at a premium or otherwise, as the directors think fit, subject nevertheless to the stipulations contained in the Agreement mentioned in Article [5] hereof with reference to the shares to be allotted in pursuance thereof [and subject to the directors being bound forthwith after the incorporation of the company to offer to each member of the old company fully paid-up preference shares of the company equal in nominal amount to the amount of the preference shares of the old company held by him, and that upon the footing that such offer shall be taken to lapse in case the person to whom it is made does not, by notice in writing delivered to the company within 21 days after it is made or within such extended time as shall be allowed for the purpose by the directors, agree to accept the allotment of such fully-paid up shares in satisfaction of the sum payable to him under the said Agreement in respect of his preference shares of the old company and subject to the further proviso that before allotment of any such paid-up preference shares the directors may enter into an agreement with any person nominated by it as trustee for the allottees providing for such allotment.]¹

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Company.

12. The company may at any time pay a commission to any person for subscribing or agreeing to subscribe either absolutely or conditionally for any shares in the company or procuring or agreeing to procure subscriptions, absolute or conditional, for any shares in the company, subject to the condition that no commission shall be paid or payable out of the [share] capital unless the provisions of the Act are complied with, and in no case shall the commission exceed [10] per cent. on the shares in each case subscribed or to be subscribed.²

¹ The bracketed clause is applicable to cases of reconstruction.

² Some draughtsmen may prefer instead of Articles 11 and 12 to utilise one Article for their subject matter *e.g.*, "*The directors as regards all allotments of shares made from time to time shall duly comply with the provisions of the Act, and the company may exercise the powers conferred upon it thereunder in reference to any offer of any of its shares for public subscription but no commission shall exceed [10] per cent. on the shares so offered.*" There is no statutory limit as to the amount or rate of commission of which the payment may be authorised by the Articles. The door is thus open to abuse. The Editor has seen "100 per cent." inserted in approved companies. This appears to him against the spirit of the Act and it is not an example to be followed. Separate Articles dealing with allotment may respectively and specifically refer to compliance with the provisions of sections 85 and 88 of the Act and with the payment of commission to section 89, and where this course is

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13. If the whole or part of the amount or issue price of any share under the conditions of allotment is payable by instalments, every such instalment shall, when due, be paid to the company by the person for the time being registered as the holder of such share or his personal representatives.¹

14. The company save as herein otherwise provided shall be entitled to treat the registered holder of any share as the absolute owner thereof, and accordingly shall not be bound (except otherwise than by the decree of a Court of competent jurisdiction or as by statute required) to recognise any equitable or other claim to or interest in such share on the part of any other person, and no such claim or interest shall be preferred against the company to the prejudice of any lien competent to it therein.²

15. No person under twenty-one years of age and no partnership or firm (even though having a separate *persona* by the law of its domicile) shall be entitled to be registered as a member.³

adopted the directors have the express citation of the statutory enactments before them. Article 5 of Table A proceeds on such lines. Section 89 of the Act directs that "no company shall apply any of its shares or capital money" in payment of subscription or underwriting commissions except to the extent authorised by the Act and sanctioned by the Articles of the Company. "Capital" is defined in the Interpretation clause as the share capital of the company, and where it is adopted, then "capital" should only be used.

¹ Where large dealings in shares are likely to take place before payment of all the calls thereon, the payment of instalments may be provided for as here suggested.

² It is not usual or necessary in the case of purely Scottish companies to insert Articles dealing with the non-recognition of trusts. Section 27 of the Act in regard to the non-recognition of trusts applies only to companies registered in England or Ireland. But large companies with interests in England and abroad have adopted Articles similar to the form. See *Company Law and Practice*, p. 54.

³ As to firms, see *Company Law and Practice*, pp. 48, 76, and as to minors, see *ibi.*, p. 76. This suggested Article is common in companies of the nature referred to in the previous note. It may be generally omitted, because directors generally have power in the Articles to control the acceptance of transfers. It is difficult to appreciate, at least in Scotland, any objection to the acceptance of a firm as a member of a company. Assuming solvency, the company can call upon the firm and its partners jointly and severally to make good its share liability. Trouble does arise under English law as to "infants." A transfer in favour of an "infant," *i.e.*, one under 21 years of age, is voidable by English law. It is the primary duty of the transferor to see that his transferee is subject to no incapacity for membership. *Joint Stock Discount—Mann*, 1867, 3 Ch. Ap. 459 *n.*

16. The directors shall comply with the provisions of section **Form No. 2.**
 26 of the Act by making at least once a year a list and summary **Public**
 of its [share] capital, members, mortgages and otherwise by **Company.**
 forwarding a copy thereof to the registrar of companies and by
 otherwise complying therewith.¹

SHARE CERTIFICATES.

17. Every member shall be entitled, without payment of a fee, to one certificate for the shares registered in his name for the time being under the common seal of the company, signed by [one] director and countersigned by the secretary, and specifying the number or numbers of the share or shares in respect of which it is issued, and the amount paid up, or deemed to be paid up thereon; [but where any shares are held jointly by two or more persons, such persons shall not be entitled to delivery from the company of more than one certificate in respect of such shares, and delivery to any one of the joint holders thereof shall be held as delivery to all of them.]²

¹ This Article is sometimes inserted where punctiliousness suggests that the code, more or less comprehensive, of the directors' statutory obligations should be found in the Articles; and another practice is to group all the statutory duties of directors into one Article, as in Article 100 of this Form. See *Company Law and Practice*, p. 51, *et seq.*

² Where there are different classes of shares, the certificates should apply to "each class of shares registered," &c., and provision may be also made for a charge being made for each certificate desired after the first of, say, the sum of one shilling. Section 92 of the Act provides for delivery of certificates of shares within two months of allotment or transfer registration unless the conditions of issue are otherwise. This Article follows Table A in requiring no payment for the first certificate, and this is a Stock Exchange necessity. Share certificates to meet the requirements of the Stock Exchange should state on their face the authority under which the company is constituted and the amount of its authorised share capital with a footnote to the effect that no transfer of any portion of the holding can be registered without production thereof and the certificates should be sealed, signed, and countersigned as specified in this Article. The signatures must be holograph. See London Stock Exchange Rules printed in the Appendix. It is unusual, to provide for additional certificates being issued except in the case of the loss, destruction, &c., of the original. The various Articles dealing with joint-holders of shares as to their rights to notices, dividends, &c., may be grouped under the heading of "Joint holders," arranging the group from this Article, and Articles 23, 84, 143, 146, and 168.

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Table A—6.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

18. If any certificate is defaced, worn out, lost, or destroyed, it may be renewed on payment of such sum not exceeding one shilling, as the directors may prescribe, and upon the party applying for the new certificate giving up the defaced or worn-out certificate, or giving such evidence of its loss or destruction and such indemnity to the company as will satisfy the directors.¹

Table A—7.

7. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity as the directors think fit.

[CONVERSION OF SHARES INTO STOCK [&C.].

[1. The company [in general meeting] may convert any paid-up shares into stock.

Table A—31.

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction reconvert any stock into paid-up shares of any denomination.

or

Variation.

[1. Fully paid-up shares of the company may be converted by a resolution of the directors into preference stock and ordinary stock, in the proportions of [three-fifths] preference stock and [two-fifths] ordinary stock, with right in respect of such preference stock to a fixed cumulative preferential dividend at the rate of [] per centum per annum, and to priority over the ordinary

¹The cost of a new certificate must not exceed one shilling where Stock Exchange quotation is desired. See London Stock Exchange Rules printed in the Appendix.

stock in repayment of capital and arrears or deficiency of dividend and premium on capital, all as hereinafter provided.¹

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[2. The several holders of any shares converted into stock may thenceforth upon their conversion transfer their respective interests therein, or any part of such interests, in the same manner, and subject to the same Articles, as and subject to which shares may be transferred or as near thereto as circumstances will admit, and subject to the right of the directors from time to time, if they think fit, to fix the minimum amount of stock transferable, and to direct that fractions of a pound shall not be dealt with unless in any particular case the directors agree in their discretion to waive such rules.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose. Table A—32.

[3. Stockholders shall have the same privileges and advantages in proportion to the stock held by them for the purpose of voting at meetings of the company, and as regards participation in profits and for other purposes as would have been conferred by such number of shares in the capital of the company as would be equal in nominal value to the nominal value of such stock; but so that none of such privileges or advantages, except the participation in the profits of the company, and in the distribution of the surplus assets in the event of a winding up, shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred such privileges or advantages. [No preference or other special privilege shall be affected by any such conversion.]

¹ Except in the case of large companies, it is not usual to include Articles dealing with conversion. It is a matter which can be arranged at any future time without difficulty by getting the Articles altered so as to confer power of conversion in terms of section 41 of the Act. For this reason it is not desirable to have a special Article on the lines of this variation.

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Table A—33.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

[4. All provisions of these Articles with regard to shares, in so far as consistent with the context or subject-matter, shall be applicable to stock into which any shares shall have been converted.

Table A—34.

34. Such of the regulations of the company (other than those relating to share warrants) as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

[5. The company may re-convert stock into fully paid shares of any denomination.¹

[SHARE WARRANTS.]

[1. The company in respect of fully-paid up shares may issue share warrants under its common seal stating that the bearer is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of future dividends on the shares included in such warrants.

Table A—35.

35. The company may issue share warrants, and accordingly the directors may in their discretion, with respect to any share which is fully-paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence, if any, as the directors may from time to time require as to the identity of the person signing the request and on receiving the

¹ See Article 31 of Table A.

² The Editor suggests that these Articles dealing with share warrants except in the case of large companies may be conveniently left out. It is a simple matter to alter the Articles whenever the policy of issuing share warrants is decided upon. Articles 35 to 40 of Table A show the general scope of the provisions with reference to these warrants. The Form supplies certain Articles based mainly on the lines of a very large and well-known Scottish company with interests abroad and many shareholders outside the United Kingdom. See Section 37 of the Act and *Company Law and Practice*, p. 80.

certificate, if any, of the share, and the amount of the stamp duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons, or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant.

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36. A share warrant shall entitle the bearer to the shares included in it, and the shares shall be transferred by the delivery of the share warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

Table A—36.

[2. The directors [before the issue of any share warrant, shall frame and enter in the minute book the conditions or] may determine and from time to time vary the conditions upon which such share warrants shall be issued and in particular as to new share warrants or coupons being issued in the place of those worn out, defaced, lost, or destroyed, the right, if any, of the bearer thereof to attend and vote at general meetings, and as to the surrender thereof and the name of the holder being entered in the register in respect of the shares therein specified and subject to such conditions whether made before or after the issue of such warrants and subject to these Articles the holder of a share warrant shall be a member to the full extent, and such conditions shall be printed upon the back of every share warrant.

37. The bearer of a share warrant shall, on surrender of the warrant of the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

Table A—37.

38. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share warrant. The company shall, on two days' written notice, return the deposited share warrant to the depositor.

Table A—38.

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Table A—39.

39. Subject as herein otherwise expressly provided no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

Table A—40

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

[3. No person shall be qualified to be a director by reason of his being the bearer of any share warrant.

[4. Holders of share warrants shall not be entitled to vote by proxy in respect of the shares included therein.

[5. It shall not be necessary to give any other notice than notice by advertisement to the bearers of share warrants.

or

Variation.

[5. The holder of a share warrant shall not, unless provision is made therein therefor, be entitled in respect thereof to notice of any general meeting of the company.]

CALLS ON SHARES.

19. The directors [may from time to time fix and determine the sum or sums (if any) payable on allotment of shares, in addition to any premiums, or sums in the nature of premiums, at which the shares shall be issued, and]¹ may from time to time make calls, payable by instalments or otherwise, upon the members, in respect of all moneys unpaid on the shares held by them respectively, [and not by the conditions of allotment thereof made payable at fixed times], provided that no call shall exceed [one-fourth] of the nominal amount of a share, or be made payable within less than [one] month after the last preceding

¹ If the part here bracketed is adopted, an Article on the lines of Article 15 of Table A is superseded, but it is suggested that it is preferable to insert the special Article 24 and to delete this bracketed part. It is optional to make a separate Article of the concluding portion of this Article so as to read, "No call shall exceed," &c.

call was payable], and each member shall pay the amount of every call so made on him, to the persons and at the times and places appointed by the directors. **Form No. 2.**
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Company.

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares. **Table A—12.**

20. Calls shall be deemed to have been made at the time when the resolution of the directors authorising the same was passed, and an entry in the minute book of a resolution of the directors making any call shall be conclusive evidence of the making thereof.¹

21. [Fourteen] clear days' notice² of any call shall be given, specifying the time or times and place [or places] of payment, and to whom such call shall be paid [subject to the right of the directors by notice in writing to the members to revoke the same or to extend the time for payment thereof].³

22. If the sum payable [on any share under the conditions of its allotment or] in respect of any call or instalment be not paid on or before the day appointed for payment thereof, the [allottee or] holder for the time being of the share in respect of which the call shall have been made, or the instalment shall be due, shall, in the option of the directors, pay interest for the same, at such rate as the directors may fix, not exceeding the rate of per cent. per annum, from the day appointed for the

¹ If No. 1 of the optional Articles, p. 163, is adopted, this Article falls to be deleted.

² It will be seen that Article 12 of Table A makes this provision. Twenty-one days, or any other period, may be substituted for the period fixed by that Article. The proviso, in brackets, at the end is seldom inserted. As to "clear days," see Interpretation Article No. 3, p. 50.

³ Here may be usefully added or stated as an independent article:—"The directors may from time to time at their discretion, and on such terms and conditions as they may specify, extend the time fixed for payment of any call as to all or any of the members to whom, from being resident abroad or from any other cause, the directors may think proper to grant such extension or indulgence; but no member shall be entitled to demand any such extension or indulgence as of right."

Form No. 2. payment thereof to the time of the actual payment, and shall also pay all expenses which the company may have incurred, or become liable for, to procure payment of, or in consequence of the non-payment of such call, but the directors may, in their absolute discretion, waive or remit payment of such interest and expenses in whole or in part.¹

Table A—14.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of £5 per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

23. Joint holders of shares shall be jointly and severally liable for payment of all [instalments or] calls in respect thereof.²

Table A—13.

13. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

24. Any sum [whether on account of the amount of a share or by way of premium thereon] which by the terms of allotment of a share is made payable upon allotment or at any fixed date shall, for all purposes of these Articles, be deemed to be a call duly made and payable on the date fixed for payment and, in case of non-payment, the provisions of these Articles as to payment of interest, expenses, and the like, and all other relevant provisions of these Articles shall apply as if such sum were a call duly made and notified as hereby provided.³

Table A—15.

15. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

¹ There are considerations, *pro* and *con*, for the insertion of a higher rate of interest than 5 per cent., the rate usually adopted.

² The reference to "instalments," in this and other cognate Articles, will be omitted if Article 24 is preferred to Article 19. The Articles as to joint holders in reference to calls, dividends, &c., may be grouped in one Article under the heading of "Joint Holders." See note to Article 17, p. 61.

³ This Article will fall to be deleted if Article 19 is adopted in its entirety. See note thereon.

25. The directors may from time to time make arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls.¹ **Form No. 2.**
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16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment. **Table A—16.**

26. The directors may, if they think fit, receive from any member willing to advance the same [and either in money or money's worth] all or any part of the money due upon the shares held by him beyond the sums actually called for, and upon the moneys so paid [or satisfied] in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at a rate, not exceeding [£5] per cent. per annum, and upon which the member paying such sum in advance and the directors agree [but no dividends shall be payable in respect of any moneys so advanced].²

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, 6 per cent.) as may be agreed upon between the member paying the sum in advance and the directors. **Table A—17.**

¹ See note to Article 11 of this Form No. 2, p. 58.

² This Article does not properly fall under the "Calls" group of clauses, but following Article 17 of Table A it is usually inserted in this part of the Articles. Section 39 of the Act does not in express terms authorise interest, but in view of Article 17 of Table A, expressly providing for interest, it is clear that provision for payment of interest is lawful. See *Land Development*, 1888, 39 Ch.D. 259 and *Company Law and Practice*, p. 84. Such prepayments do not constitute loans so as to enable the company to repay them. *London and Northern Steamship*, 1914, 111 L.T.R. 204. It is very rare that shares are issued for the purposes contemplated in section 91 of the Act, which allows, subject to the sanction of the Board of Trade, a company to pay interest on paid-up capital expended on construction works. It is in any event unnecessary to include an Article in reference to this matter, because the company can obtain power in terms of section 91 by passing a special resolution without the necessity of any Article. The portion in brackets of this Article referring to "money or money's worth" is objectionable and should be omitted.

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FORFEITURE OF SHARES.

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27. If any member fail to pay [any sum payable under the conditions of allotment or] any call or instalment on or before the day appointed for payment of the same, the directors may, at any time thereafter during such time as the [sum or] call or instalment remains unpaid, serve a notice on such member, requiring him to pay the same, together with any interest accruing to the date of payment, and all expenses that may have been incurred by the company, by reason of such non-payment.¹

Table A—24.

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

Table A—30.

30. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

28. The notice shall name a day (not being less than fourteen clear days from the date of the notice), and a place or places on and at which such call or instalment, and such interest and expenses as aforesaid are to be paid, and shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares, in respect of which the sum, call, or instalment is payable, will be liable to be forfeited.²

¹ This Article it will be seen embodies Articles 24 and 30 of Table A. The statutory power to forfeit is inferred from the Articles in Table A and section 26 (g) of the Act. It is rare and practically inadvisable to provide for the forfeiture of shares in respect of the failure to pay indebtedness otherwise arising than out of the share obligations. The recent case of *Mortimer, Harley*, 1917, 1 Ch. 646, condemns provisions of this nature as *ultra vires* and as involving a non-statutory share capital reduction. But see the clauses adopted in *Manchester and Liverpool District Banking*, 1882, 21 Ch.D. 583, and "Palmer's Company Law," 10th Edition, p. 160. Prospectuses frequently provide that failure to pay any moneys due on application for shares renders previous payments liable to forfeiture, and the bracketed portions of this Article bear on such payments. See *Company Law and Practice*. p. 441.

² See Interpretation Article No. 3 as to "clear days," p. 50. It may be prudent to provide for longer notice in the case of members resident out of the United Kingdom, e.g., by adding "unless in the case of a

25. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

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Table A—25.

29. If the requisitions of such notice as aforesaid are not complied with, any shares in respect of which such notice has been given may at any time thereafter, before payment of all sums, calls, or instalments, interest, and expenses, due in respect thereof, be forfeited by a resolution of the directors to that effect, and such forfeiture shall include all dividends declared or payable in respect of the forfeited shares, and not actually paid before forfeiture.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

Table A—26.

30. Notice of the resolution by which any shares shall have been so forfeited, shall be given to the member in whose name they stood prior to the forfeiture, and an entry of the forfeiture with the date thereof shall forthwith be made in the register, subject to the proviso that a forfeiture otherwise valid shall not be invalidated by reason of non-compliance with the terms hereof.¹

31. A statutory declaration in writing under the hand of [one] of the directors [or the secretary] that the call in respect of a share was made, that notice thereof was given, that default in payment of the call or instalment was made, and that the forfeiture of the share was made by resolution of the directors to that effect, shall be conclusive evidence of the facts therein stated as against all persons who would have been entitled to such share but for such forfeiture and such declaration.

member registered as resident out of the United Kingdom and within Europe who shall be entitled to [thirty] days from the date of such notice, and in the case of a member registered as resident outwith Europe who shall be entitled to [ninety] days from the date of such notice." or "The Directors may cause such notice in the case of any member resident abroad whose address is known to them to be served at their option by letter or by cablegram or by wireless message."

¹ Articles 30, 34, and 37 are useful but are frequently omitted.

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Table A—29.

29. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

32. Any shares so forfeited shall be deemed to be the property of the company, and the directors may re-allot, sell, or otherwise dispose of the same in such manner as they think fit.¹

Table A—27.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

33. The directors may at any time, before any share so forfeited shall have been sold, re-allotted (either with moneys paid thereon by the former holder credited as paid up or not) or otherwise disposed of, cancel the forfeiture thereof upon such terms and conditions, and either with or without any consideration or payment as they think fit.

34. Upon any shares being forfeited, an entry shall forthwith be made in the register recording such forfeiture and the date thereof, and so soon as any shares so forfeited have been disposed of, an entry shall likewise be made therein of the manner and date of such disposal.

35. Any member whose shares have been forfeited shall, notwithstanding, be liable to pay, and shall forthwith pay to the company all calls, instalments, interest, and expenses due upon, or in respect of such shares at the time of forfeiture, together with interest thereon at £ per cent. per annum from the time of forfeiture until payment, and the directors without being bound to do so, may enforce the payment thereof if they think fit.²

¹ This and the next Article provide for what Article 27 of Table A more crisply provides.

² See *Company Law and Practice*, p. 441.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

Form No. 2.

Public
Company.

Table A—28.

36. The forfeiture of a share shall involve the extinction, at the time of forfeiture, of all interest in, and also of all claims and demands against the company in respect of the share, and all other rights and liabilities incidental to the share, as between the shareholder whose share is forfeited and the company, except only such of those rights and liabilities as are expressly saved by these Articles or by the Act.¹

37. Upon any sale being made by the directors of any shares to satisfy the lien of the company thereon, the net proceeds shall be applied—First, in payment of all costs of such sale; and then in satisfaction of the debts or obligations of the member to the company; and the residue (if any) shall be paid to the member or as he shall direct.

SURRENDER OF SHARES.

38. The directors may accept a surrender² of any share [liable to forfeiture or otherwise capable of being surrendered]

¹ It is better to omit this Article. It conflicts with Article 35. Article 32 is sufficient for all purposes.

² It is only in very special circumstances that a surrender of shares subject to any liability can be upheld. Unlike forfeiture, there is no statutory recognition of it, express or implied. "Every surrender of shares, whether fully paid up or not, involves a reduction of capital, which is unlawful, except when sanctioned by the Court," per Cozens-Hardy, L.J., in *Rowland & Marwood's Steamship*, 1902, 2 Ch. 14 p. 32. "Surrenders can only be supported," per Stirling, L.J., in that case, "in circumstances which would justify forfeiture." There, a bona-fide surrender intended to benefit the company in adverse times was treated some years later as null on the application of the surrenderors. The shares were partly paid up. Where no reduction of capital is involved, the surrender may be good, *John Rowell & Sons*, 1912, 2 Ch. 609. So, the universality of the propositions cited must be modified. Great care must be taken in seeing that any surrender is validly carried out. The mere presence of this Article will not justify a transaction by way of surrender which either involves a purchase by the company of its own shares or a reduction of its capital without the statutory sanction for reduction. For an illustration of an unreal compromise by way of surrender, see *Agriculturist Cattle Insurance—Dixon*, 1869, 5 Ch. Ap. 79.

Form No. 2. on such terms as they think fit, [provided that no part of the funds of the company shall form part of the consideration therefor] and the directors may sell, re-allot, or otherwise dispose of any surrendered share as they think fit, and register the purchaser or allottee as the holder thereof, or the directors may cancel any share acquired by surrender and may issue a new share in lieu thereof; and for the purpose of giving effect to a sale of any share acquired by the company by forfeiture or surrender, the secretary may execute under the common seal of the company a transfer of such share to the purchaser thereof, and such transfer shall confer the same rights and obligations upon the transferee as if it had been executed by the registered holder thereof.

Public
Company.

LIEN ON SHARES.

39. The company shall have a first and paramount lien upon all shares (including all dividends declared thereon) not fully-paid up registered in the name of each member (whether solely or jointly with others) for his debts, liabilities, and obligations, liquid or illiquid, solely or jointly with any other person to or with the company, irrespective of whether the period for payment or discharge thereof shall have actually arrived or not, and such lien shall extend to all dividends from time to time declared in respect of such shares, but the registration of a transfer of shares shall operate as a waiver of such lien in the absence of any stipulation otherwise by the directors.¹

¹The common law of Scotland gives the right of retention to the company over shares for debts due by the holder to the company. See *Coatbridge Tinplate*, 1886, 14 R. 246; *El Palmar Rubber Estates*, 1913, 1 S.L.T. 383. As to English Law, see *Peruvian Railway Construction*, 1915, 2 Ch. 442. Article 20 of Table A has to be kept in view as providing an effective means of operating such a right by the refusal to register a transfer of shares subject to lien, and it is usual to insert an article upon similar lines. Article 10 of Table A annexed to the Act of 1862 simply provided "The company may decline to register any transfer of shares made by a member who is indebted to them." But it will be seen that Article 20 is more restricted than that Article 10. Fully paid shares are expressly excluded from Article 20, and where quotation on the Stock Exchange is required, such exclusion is insisted upon. See London Stock Exchange Rules printed in the Appendix. Fully paid shares ought not to be made subject to lien or forfeiture in respect of any indebtedness *dehors* these shares. See *Mortimer, Harley*, 1917, 1 Ch. 646 and note to Article 27 of this Form No. 2. A "forfeiture of shares Article" in respect of any indebtedness however arising is not favoured in Scotland as an alternative to the usual lien clause. See *Company Law and Practice*,

9. The company shall have a lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

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Company.

Table A—9.

40. The directors may sell the shares, subject to such lien, in such manner and upon such terms as they think fit, provided that the debt, liability, or obligation in respect of which the lien is held is presently exigible, and provided that notice in writing of the intention to sell shall have been served on such member, his executors, or assignees, and that default has been made by him or them in the payment or discharge of such debt, liability, or obligation for [] clear days after such notice.¹

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists, is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or bankruptcy to the share.

Table A—10.

41. The net proceeds of any sale shall be applied in and towards satisfaction of such debts, liabilities, and obligations, and the residue, if any, paid to such member, his executors, or assignees.

42. Upon any sale for enforcing the lien of the company in exercise or purported exercise of the powers in these Articles, the directors may cause the purchaser's name to be entered on

p. 433. As to the enforcement of rights of lien, see *Company Law and Practice*, p. 60. Such rights can only be exercised against the registered owner. The beneficial owner unless registered is not subject to their direct operation. See *Thomas Justice & Sons*, 1912, S.C. 1303.

¹ "Fourteen days" is commonly inserted as in Article 10 of Table A, but whether that or some other period, e.g., "seven days" is fixed is in the discretion of the draughtsman. "Clear days" is defined in the Interpretation Article, No. 3, p. 50.

Form No. 2. the register in respect of the shares sold; such register shall be conclusive evidence of the title of the person so registered; and the remedy (if any) of any person aggrieved by the sale shall be in damages only, and against the company exclusively.

Table A—11.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

or

Variation.

[42. An entry in the minute book of the company of the forfeiture of any shares, or that any shares have been sold to satisfy a lien of the company, shall be sufficient evidence, as against all persons entitled to such share, that the said shares were properly forfeited or sold; and such entry, and the receipt of the company for the price of such shares shall constitute a good title to such share, and the purchaser shall be entitled to have his name entered in the register as a member of the company, and to delivery of a certificate of title to such shares and he shall not be bound to see to the application of the purchase money, and the former holder of such shares, and of any person claiming under or through him, shall have no remedy except in damages and against the company only.]

TRANSFER AND TRANSMISSION OF SHARES.

43. The [deed of] transfer of any share shall be executed by both the transferor and the transferee; and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register in respect thereof, and the execution of such deed [*or* transfer] by either of such parties [or of any consenter thereto] shall be sufficiently attested by one witness.¹

¹ It is a striking fact that there is no statutory authority for the almost universal practice of attesting the signatures of parties to transfers by one witness only. The law of Scotland requires two

Form No. 2.
Public
Company.
Table A—18.

Table A-18.

Signed by the above named _____ in presence of." •

¹ The form which follows substantially that in Article 19 of Table A is open to criticism from the standpoint of Scottish conveyancing. It is, however, the usual form approved by Stock Exchange practice. The original form in Table A was superior to the present form. The company was not there referred to as "the undertaking," and it should be omitted. "Undertaking" is appropriate to Special Act Companies regulated by the Companies Clauses Acts. To satisfy Stock Exchange authorities the Article must provide for the acceptance of transfers in this "usual form." See London Stock Exchange Rules printed in the Appendix. The stockbrokers in practice fill up "the usual form." Legally, the duty to prepare it falls upon the purchaser. *Birkett*, 1919, 35 T.L.R. 298.

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Company.

Table A—19.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve:—

I, A B, of _____, in consideration of the sum of £ _____ paid to me by C D, of _____ (hereinafter called "the said transferee") do hereby transfer to the said transferee the share [or shares] numbered _____ in the undertaking called the _____ Company, Limited, to hold unto the said transferee, his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution thereof: and I, the said transferee, do hereby agree to take the said share [or shares] subject to the conditions aforesaid.

As witness our hands the _____ day of _____

Witness to the signatures of, &c.

or

Variation.

[44. Shares may be transferred by the common form [of deed] of transfer subject to only one class of shares being transferred by one [deed of] transfer.]

45. The directors, in their discretion and without assigning any reason therefor, may refuse to register the transfer of any shares, in respect of which the company has a lien or of any share not fully paid up, to any person of whom they shall not approve as transferee.¹

Table A—20.

20. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors

¹ The Stock Exchange objects to any restrictions on the transfer of fully paid up shares, and hence they are excepted in the suggested Article as is also done in Article 20 of Table A. See *Company Law and Practice*, p. 438. While this Article may closely follow Article 20 of Table A in all respects, it is more common to make separate Articles as to the closing of the register, &c. See Articles 50, 52, and 53. Directors must exercise their restrictive powers as to the passing of transfers in good faith and with regard to the interests of the company, and direct their attention to the transferee. The motive of the transferor in transferring fully-paid shares is immaterial. *Bede Steam Shipping*, 1917, 1 Ch. 123. The rejection of a transfer in favour of a member already on the register is exceptional, and such an exercise of discretion by a Board of Directors may be discounted in such circumstances in consequence of the transferee becoming the trustee for the transferor so rejected and under obligation to vote as required.

may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

Form No. 2.
Public
Company.

- (a) A fee not exceeding two shillings and sixpence is paid to the company in respect thereof, and
- (b) The instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

46. The executors or administrators of a deceased member (not being one of several joint holders) shall be the only persons recognised by the company as having any title to the shares registered in the name of such member and in the case of the death of any one or more of the joint holders of any registered shares, the survivors or survivor (without prejudice always to the liability of the estate of any deceased joint holder in respect of such shares) shall be the only persons or person recognised by the company as having any title thereto.¹

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share. Table A—21.

47. Any person becoming entitled to shares in consequence of the death, bankruptcy, liquidation or insolvency of any member, or by any [lawful] means other than by transfer in accordance with these Articles upon producing such evidence as the directors think sufficient, may be registered as a holder of such shares, or may, upon producing such evidence and executing a transfer in accordance with these Articles, have his transferee registered as such holder, provided that in such cases the directors shall

¹ See *Connell's Trustees*, 1886, 13 R. 1175, and *Perrett's Trustees*, 1909, S.C. 522. The adoption of this Article in regard to the interests of survivors in joint holdings is becoming usual so far as registration for membership purposes is concerned. The practice innovates upon the Scottish common law.

Form No. 2. have the same right to refuse registration of such person or his transferee as in the case of transfer by registered members [and this Article is hereinafter referred to as the "transmission Article."] ¹

Table A—22.

22. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

48. No person claiming a title to a share by transmission shall have any rights in respect of such share, except the right to be registered, or to have his transferee registered under these Articles, and a right to receive dividends (if any) actually declared before the death, or other transmission of interest, and all dividends declared after transmission shall belong to the person next registered as the holder of the shares.²

¹ As companies may be registered as shareholders, "liquidation" may be inserted as one of the eventualities provided for, although probably "bankruptcy" or "insolvency" would sufficiently meet the case of liquidation. The bracketed portion at the end of this Article is frequently adopted and other Articles must correspond. See section 29 of the Act, and *Marks v. Financial News*, 1919, 35 T.L.R. 681.

This Article is substantially more restrictive than Article 23 of Table A. Voting rights are excluded. The Editor has found in practice an Article providing that production of confirmation or probate should be equivalent to an offer by the executors for the sale of shares of a deceased member at a price under the control of the directorate of the company and irrespective of market value. Where there is no restriction upon the power of transference on the part of members, such an Article for the purpose of co-opting shares appears in conflict with the rights of representatives under section 29 of the Act. In the case of extensive, or any, holdings in large and wealthy companies, prudence suggests an examination of the company's Articles before intimating the title of the representatives of *e.g.*, deceased members. Where the title is not intimated to the company on account of such a provision, the company may meet that attitude by an Article providing for the sale of such shares after the lapse of a certain period. The effect of section 29 of the Act upon such an Article remains to be tested.

23. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Form No. 2.

Public
Company.

Table A—23.

49. In the case of any person becoming entitled to shares by transmission the company may retain any dividend declared upon such shares until the terms of these Articles have been complied with, and the company shall not in the meantime be bound to recognise the title of the person claiming under such transmission; and if any person so becoming entitled to any partly-paid shares shall not have complied with the terms of these Articles for a period of three months from the time of his so becoming entitled, the directors may cause to be served on him a notice requiring him to comply with such terms within a specified period, not being less than one month from the date of such notice, and stating that if he does not comply with the requirements of the said notice the shares in respect of which such notice is given will be liable to forfeiture; and if the person on whom such notice has been served shall not comply with the requirements thereof within the time named therein, the shares in respect of which the said notice was given shall be liable to be forfeited by a resolution of the directors passed at any time before the requirements of the said notice shall have been complied with.¹

50. Before registration of any transfer the [deed of] transfer shall be left at the office of the company, together with the certificate of the shares to be transferred, and together with any other evidence the directors may require to prove the title of the transferor, and the transfer if registered shall thenceforth be kept by the company [and if registration thereof be declined the

¹ No company ought to recognise the title of any stranger, executor or otherwise, to the shares of a deceased member by registration or by payment of dividends without production of confirmation or its equivalent in proof of payment of duties exigible by the Crown. By so acting the company may render itself liable for the duties in respect of the shares. See *New York Breweries*, 1899, A.C. 62. This Article has been adopted to compel due administration by executors, but, of course, the same result without the penal provision for forfeiture, can be obtained by the company doing nothing until a proper transfer with legal title is produced to the directors.

Form No. 2. same shall be returned on demand to the person tendering the same therefor,] [and in any case where the directors are not satisfied as to any deed being duly stamped, they may require the same to be adjudicated by the Commissioners of Inland Revenue as duly stamped].¹

Public
Company.

51. The tutors, curators, or other guardians of a pupil or minor member, and the *curator bonis* or committee of a member, insane or otherwise incapax, may, upon producing to the directors such evidence of their position as may be reasonably required, be placed upon the register in respect of the shares held by such pupil, minor or insane member as the case may be [or subject to the provisions of these Articles, transfer the same to some other person].

52. The transfer books [and register] may be closed [during the period of fourteen days preceding the annual general meeting of the company and *or*] during such [other] time or times, not exceeding in all thirty days in each year, as the directors may determine.²

53. A fee of two shillings and sixpence [may be charged for each transfer, and shall if required by the directors be paid before the registration thereof *or*] shall be paid on the registration of every transfer.³

54. The directors shall also be entitled to require payment of a fee of two shillings and sixpence for the registration of any member in respect of his right to shares by any transmission otherwise than by transfer or consequent upon any judicial decree or of any entry relating to the change of name of any member, to the marriage of any female member, or to any power of attorney authorising the purchase of shares.

Special
Article.

55. Subject as hereinafter is provided none of the ordinary shares of the company issued to the _____ shall be _____

¹ See Article 20 of Table A. The directors do not require an express power in the Articles to enable them to call for adjudication. See *Company Law and Practice*, p. 43.

² See Article 20 of Table A and section 31 of the Act.

³ See Article 20 of Table A.

transferable in the books of the company, until after
 , 1919, but provided always that the person or persons
 who may become entitled to such shares on the death of the said
 may be registered as the holders of such shares
 under Article [43].¹

Form No. 2.

Public
Company.ALTERATION OF [SHARE] CAPITAL.²

56. The company in general meeting may from time to time

¹ It will be for the draughtsman of the Articles of any particular company to select any of the suggested Articles from 49 to 55 inclusive. 49 is unusual and 55 is very exceptional. But uncommon clauses throw light upon what is done under varying circumstances, *e.g.*, 55 points to some condition imposed upon the seller under the formation agreement. In such a case a Stock Exchange quotation will not be contemplated.

² Following Articles 41 and 44 of Table A, this heading covers any alteration by way of increase, consolidation, reduction, or otherwise, but some prefer to sub-divide the Articles dealing with this branch under separate headings, *e.g.*, "Increase of Share Capital," "Increase and Reduction of Share Capital," "Reduction of Share Capital," "Sub-division and Consolidation," "Reorganisation of Share Capital," "Modification of Rights," &c. Sections 41, 45, and 46 of the Act must always be kept in view. Share capital may be increased by either an extraordinary or a special resolution of the company, or by a simple or ordinary resolution, or power may be given solely to the directors to effect it by their resolution; but sub-division and reduction can only be effected by special resolution. Consolidation of shares under section 41 of the Act refers to their division into shares of larger amount and sub-division thereunder applies to their division into more shares of lesser amount. The Articles must authorize these operations. Section 45 of the Act has in view a different kind of consolidation by merging different classes of shares or the splitting up of shares into different classes. This distinction is not always borne in mind. The Act contemplates that the Memorandum does not include the power of reorganisation in the sense of the 45th section and accordingly provides for the particular process of consolidation or division there enacted being carried out by a special resolution sanctioned by the Court. The Act, it is thought, does not enable a company to take such power by providing therefor in its Articles. It is difficult to appreciate the reason. Prior to 1907, companies frequently obtained Special Acts to effect reorganisation of the description in question, and apparently, although creditors are not affected, the safeguard of judicial confirmation was deemed necessary. See *Palmer's Company Precedents*, 11th edition, 1912, I. p. 1520 and *Schweppes*, 1914, I Ch. 322. Where "variation" Articles are selected, care must be taken to see that the Articles are made consistent throughout. This warning applies throughout to bracketed portions in Articles which may or may not be adopted. Upon the footing that the Interpretation Article, No. 3, defines "capital" as the share capital of the company, "capital" is used throughout this Form. Otherwise, the statutory phrase, "share capital" should be used.

Form No. 2. increase the [share] capital by the creation of new shares, of such amount as may be deemed expedient.¹
 Public
 Company.

Table A—41.

41. The directors may, with the sanction of an extraordinary resolution of the company, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

or

Variation.

[56. The company may from time to time, by special resolution, [or The directors may from time to time, with the sanction of a special resolution of the company previously given in general meeting], increase its [share] capital to such amount by the creation of new shares to be divided into shares of such amounts, and to be issued on such terms and conditions, and with or without a right of preference, either in respect of dividend or of repayment of capital, or both, or with such deferred rights to the original or other shares of the company [or with or without voting rights] as the company may deem expedient.]

Table A—3.

3. Subject to the provisions, if any, in that behalf of the Memorandum of Association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine.

57. Unless otherwise directed by the meeting resolving upon the increase of capital, all new shares shall be offered to members of the company as nearly as possible (excluding fractions) in proportion to the existing shares held by them [except in cases where a further issue is made in respect of the purchase of additional property and where such shares are issued as fully or partly paid in whole or part payment therefor]² and that

¹ Under this Article, the resolution need not be extraordinary or special. See *Company Law and Practice*, p. 445, and section 41 of the Act and previous note.

² This Article provides for parity of treatment in the issue of new capital among the existing members. The reference to the exclusion of fractions puts briefly the effect of the concluding sentence in Article 42 of Table A. It is common to insert the bracketed portion, but where

either at par or at a premium as the directors may determine; **Form No. 2.**
 and such offer shall be made by notice, specifying the number of ^{Public}
 shares to which the member is entitled, and limiting a time ^{Company.}
 within which the offer, if not accepted, will be deemed to be
 declined; and after the expiration of such time, or on the receipt
 of an intimation from the member to whom such notice is given
 that he declines to accept the shares offered, the directors may
 dispose of the same in such manner as they think most beneficial
 to the company.

42. Subject to any direction to the contrary that may be given **Table A—42.**
 by the resolution sanctioning the increase of share capital,
 all new shares shall, before issue, be offered to such
 persons as at the date of the offer are entitled to receive
 notices from the company of general meetings in pro-
 portion, as nearly as the circumstances admit, to the
 amount of the existing shares to which they are entitled.
 The offer shall be made by notice specifying the number
 of shares offered, and limiting a time within which the
 offer, if not accepted, will be deemed to be declined, and,
 after the expiration of that time, or on the receipt of an
 intimation from the person to whom the offer is made
 that he declines to accept the shares offered, the directors
 may dispose of the same in such manner as they think
 most beneficial to the company. The directors may like-
 wise so dispose of any new shares which (by reason of the
 ratio which the new shares bear to shares held by persons
 entitled to an offer of new shares) cannot, in the opinion of
 the directors, be conveniently offered under this Article.

or

- [57. The company in general meeting may before the issue of **Variation.**
 any new shares resolve that the same or any of them shall be
 offered in the first instance to all the existing members in pro-
 portion to the amount of the [share] capital held by them, or
 otherwise provide for the issue and allotment of such new
 shares, and in default of any such resolution or provision the

there is not to be parity of treatment or the fresh shares are intended
 to meet some property purchase, the resolution provides for the terms
 and conditions of the issue and effects the direction "to the contrary" or
 "otherwise" referred to in Article 42 of Table A and in this Form. In
 certain cases, *e.g.*, where the issue of preference and ordinary shares or
 stock or debentures or debenture stock is contemplated, one of the
 variation forms of this Article may be advantageously used; but, as
 already indicated, the company in general meeting may regulate the parti-
 cipation in any issue by the terms of the resolution and in effect alter the
 provisions of the Articles. Articles 56 and 57 are frequently combined.

Form No. 2. new shares may be dealt with as if they formed part of the original [share] capital.]

Public
Company.

or

Variation.

[57. All new shares shall be offered to the members of the company in the proportions of [50 per cent.] of such issue to the holders of preference shares and [50 per cent.] to the holders of ordinary shares, and thereafter as nearly as possible in proportion to the amount of shares held by each member [except in cases where a further issue is made in respect of the purchase of additional property and where such shares are issued as fully or partly paid in whole or part payment therefor, and except also in the case of shares created upon a capitalisation of reserve] and such offer shall be made by notice, specifying the number of shares to which such member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.]

or

Variation.

[57. The new shares, and also all shares forming part of the original [share] capital of the company which may not have been issued on the formation of the company, shall, subject to the terms of Article 58 hereof, be issued to such persons, upon such terms and conditions and with such rights and privileges annexed thereto as, in the case of new shares, the general meeting resolving upon the creation thereof shall direct, and if no direction shall be given, as the directors determine, and in the case of old shares not issued on the formation of the company as aforesaid, as the general meeting, or the directors at the Board meeting, resolving upon the issues thereof, may determine; and in particular, such shares may be issued with a preferential or qualified right to dividends, and to a ranking in the distribution of the assets of the company, and with a special or without any right of voting; and subject to any direction in the resolution authorising the issue, the directors may, before the issue of any new shares, determine that the same, or any of them, shall be offered in the first instance to all the then members, or to the members and holders of debentures or debenture stock of the company, in proportion to the amount of the share capital held or sums advanced by them respectively,

or make any other provisions as to the issue and allotment of the new shares; but in default of any such determination, and so far as the same shall not extend, the new shares may be dealt with as if they were part of the shares in the original share capital.] **Form No. 2.**
Public
Company.

58. [Share] capital raised by the creation of new shares (except in so far as the company, on the creation thereof, shall otherwise determine) shall be regarded as part of the original [share] capital, and shall be subject to the provisions of these Articles with reference to the payment of calls and instalments, transfer and transmission, forfeiture, lien, surrender, and otherwise.

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital. **Table A—43.**

59. [Without prejudice to any other power of modification resting in the company], if at any time the [share] capital [by reason of the issue of preference shares or otherwise] is divided into different classes of shares, all or any of the rights and privileges attached to each class (unless otherwise provided by the terms of the issue thereof) may be varied with the consent [or modified by agreement between the company and any person purporting to contract on behalf of each class, provided such agreement is (a) ratified] in writing by the holders of at least three-fourths of the nominal amount of the issued shares of each class [or is (b) confirmed by] or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of shares of each class, and all the provisions of these Articles as to general meetings shall, *mutatis mutandis*, apply to every such meeting, except that the quorum thereof shall be members holding or representing by proxy [three-fourths] of the nominal amount of the issued shares of each class [and this Article shall not, by implication, curtail the power of modification which the company would otherwise have].¹

¹The subject matter of Articles 3 and 4 of Table A is frequently dealt with in the Memorandum, but in order to avoid the somewhat restrictive provisions of section 45 of the Act, the issue of shares of different classes, and the variation of the rights of the holders may be conveniently provided for in the Articles by adopting, with the necessary adjustment, Articles 3 and 4 of Table A as is found in Articles 56 (variation) and 59 of this Form. Article 59, when adopted, is

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Table A—4.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

60. The company from time to time, by special resolution, may reduce its [share] capital [in any manner allowed by law or by paying off capital, or cancelling capital lost or unrepresented by available assets, or reducing the liability on its shares, or in any way as may seem expedient]; and capital may be paid off upon the footing that it may be called up again or otherwise.¹

commonly headed "Modification of Rights." See *Company Law and Practice*, p. 25, and General Notes upon Memorandum of Association, Form No. 1. It will be seen that Article 4 of Table A gives the alternative of an extraordinary resolution for which the statutory majority thereunder would be three-fourths of the members present at the meeting. Under section 45 of the Act, the requisite majority is of the whole shareholders affected by the resolution, and the resolution requires confirmation. Sometimes this is found to be a serious bar, (and perhaps, in many instances, properly so,) to interference with existing rights in cases where that section operates. The Editor does not recommend the introduction into the usual "Modification of Rights" Article of the proviso machinery of the section in question as applicable to all or any proposed modifications upon existing rights. The quorum prescribed by Article 4 of Table A is, however, not sufficiently protective, and a three-fourths representation of particular classes of shareholders meets with more general acceptance. It is frequent to find that this clause covers the "abrogation" of rights and privileges as well as their "variation;" but it seems preferable to leave such drastic interference as is inferred by "abrogation" to a scheme of arrangement under section 120 of the Act when the circumstances emerge. It has to be kept in view that the proviso in section 45 only applies to the particular method of alteration of capital contemplated by the section. See *Schweppes*, 1914, 1 Ch. 322.

¹ Article 44 of Table A (printed on p. 89) provides for consolidation, reorganisation and reduction of share capital, &c., and the variation Articles based upon it are frequently adopted. But the primary forms for Articles 60, 61 and 62 appear preferable. In regard to the power taken for reduction of share capital, the qualification "in any manner allowed by law" is common, but it is superfluous. It is both sufficient and comprehensive to provide that "The company by special resolution may reduce its [share] capital" without detailing any of the methods by which such reduction may be effected.

61. The company may, by special resolution, subdivide or [by ordinary resolution] consolidate its shares or any of them.¹

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62. The special resolution whereby any share is subdivided may determine that, as between the shares resulting from such subdivision, any of such shares shall have preferential rights in respect of dividend, distribution of assets, voting, or otherwise, as the company shall deem expedient.

[VARIATIONS UPON ARTICLES 60, 61, AND 62.]

[60. The company may by special resolution, subject, where necessary, to the confirmation of the Court, in terms of the Act—

Variation.

- (a) Divide or consolidate its [share] capital into shares of other amount, smaller or larger, than its existing shares.
- (b) Reduce its [share] capital to such amount in any way as may from time to time be deemed expedient.
- (c) Cancel any shares not taken or agreed to be taken by any person at the date of such resolution.²

44. The company may, by special resolution—

Table A—44.

- (a) Consolidate and divide its share capital into shares of larger amount than its existing shares.³
- (b) By subdivision of its existing shares or any of them, divide the whole, or any part, of its share capital into shares of smaller amount than is fixed by the Memorandum of Association, subject, nevertheless, to the provisions of paragraph (d) of sub-section (1) of section 41 of the Companies (Consolidation) Act, 1908:
- (c) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person:
- (d) Reduce its share capital in any manner and with, and subject to, any incident authorised, and consent required, by law.

[61. The company may from time to time return paid-up [share] capital upon the footing that the amount returned may be called up again in the same manner as if it had never been paid.]

Variation.

¹ See section 41 (2) of the Act.

² As to cancellation, see section 41 (1) (e) of the Act.

³ This operation cannot increase the existing amount of the share capital. Section 41 of the Act does not warrant such a construction, although it has been suggested to the Editor as possible.

Form No. 2.	[62. Anything done in pursuance of the two preceding Articles shall be done in manner provided by the Act, so far as it shall be applicable and so far as it shall not be applicable in accordance with the terms of the special resolution authorising the same, and so far as such resolution shall not be applicable, in such manner as the directors deem most expedient.]
Public Company.	
Variation.	

GENERAL MEETINGS [*or* MEETINGS OF MEMBERS].

63. The [first general *or*] statutory meeting of the company shall, as required by section 65 of the Act, be held within a period of not less than one month or more than three months from the date at which the company shall be entitled to commence business and at such time and place as the directors may determine [and the directors shall comply with the other requirements of the said section as to the report to be submitted by them and otherwise.]

Table A—45.	45. The statutory general meeting of the company shall be held within the period required by section 65 of the Companies (Consolidation) Act, 1908.
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64. Other general meetings shall be held once at least in each calendar year and not more than fifteen months after the holding of the last preceding general meeting at such time and place as may be prescribed by the company in general meeting, or, if no time or place is so prescribed, at such time and place as may be determined by the directors.¹

Table A—46.	46. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and
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¹ This Article gives effect to the 64th section of the Act. Provision is sometimes made for two or three members calling the meeting in default of the directors doing so, but such default is rare, and where it occurs any member may apply to the Court under section 64 of the Act to have the meeting held, unless, as is usually the case, a petition for liquidation is more effective. Section 87 of the Act deals with the conditions regulating the date at which a public company is entitled to commence business. As to "calendar year," see *Company Law and Practice*, p. 54.

may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors. **Form No. 2.**
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[64. Subsequent general meetings shall be held once in each year at such time and place as may be prescribed by the directors.] **Variation.**

or

[64. The annual general meeting of the company shall be held in the month of in each year as the directors shall appoint.] **Variation.**

65. The above mentioned general meetings shall be called ordinary [general] meetings and all other general meetings shall be called extraordinary [general] meetings.

47. The above mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary. **Table A—47.**

66. No business shall be transacted at an extraordinary [general] meeting except that for which it shall have been convened.

67. The directors may, whenever they think fit, and shall, on a requisition of the holders of not less than [one-tenth] of the issued [share] capital of the company, upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary [general] meeting of the company [and in the case of such requisition the following provisions shall have effect]:—

- (1) The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the office, and may consist of several documents in like form, each signed by one or more of the requisitionists.
- (2) If within [twenty-one] days from the date of the requisition being so deposited, the directors of the company do not proceed to cause a meeting to be held, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after [three] months from the date of such deposit.

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- (3) If at any such meeting, any resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary [general] meeting for the purpose of considering the resolution, and if thought fit of confirming it as a special resolution; and if the directors do not convene the meeting within [seven] days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.
- (4) Any meeting convened under this Article by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by the directors.¹

Table A—48.

48. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 66 of the Companies (Consolidation) Act, 1908. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general

¹ This Article is an echo of the provisions of section 66 of the Act. No Articles can be framed so as to be inconsistent with this section, *e.g.*, while the interests of the requisitionists in the share capital might be stated as less than "one-tenth," it cannot be increased beyond one-tenth. The section is imperative as to the rights of requisitionists. It appears to be desirable therefore to repeat in the Articles for a public company substantially the terms of the section in preference to the abbreviated form in Article 48 of Table A. See *Company Law and Practice*, p. 124, *et seq.* Immaterial variations in requisitions separately deposited are disregarded. Further, the "issued share capital" means the part of the capital upon which all calls or other sums due have been paid. *Fruit and Vegetable Growers*, 1912, 2 Ch. 52. It may be desirable to insert a clause dealing exclusively with extraordinary general meetings called by the directors, giving effect to the latter sentence of Article 48 of Table A, and to add in addition, that at such meetings the company should have power to elect directors. If preferred, the bracketed portion of this Article can be omitted, and in that case branches (1) to (4) thereof are numbered, generally, as separate Articles. Sub-section (3) of section 66 of the Act is slightly ambiguous in suggesting that the meeting falls to be called within twenty-one days. The statute directs that the directors must proceed within twenty-one days to call the meeting. The date of the meeting ought not to be fixed beyond the period of three months from the date of the depositing of the requisition to which period sub-section (3) of section 66 confines the requisitionists. Notice that any ambiguity is removed by the construction of branch (2) of Article 67 in the Form.

meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

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PROCEEDINGS AT GENERAL MEETINGS.

68. Seven [clear] days' notice at least [(exclusive of the day on which the notice is served or deemed to be served but inclusive of the day for which the notice is given)] specifying the place, the day, and the hour of meeting, and in case of special business, the general nature of such business shall be given to the members [either by advertisement or by notice sent by post or otherwise served] in manner hereinafter provided; but the non-receipt of [or the accidental omission to give] such notice to any shareholders [not exceeding one-tenth of the whole members entitled to vote at the meeting], shall not invalidate the proceedings at any general meeting.¹

49. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but the the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

Table A—49.

¹ If there is a definition of "clear days" in the Interpretation Article, then the parenthetical and exegetical part of this Article within brackets should be deleted. It is of advantage to have a definition either in this Article or in the Interpretation Article, and preferably the definition as in this Form, p. 50. See *Company Law and Practice*, p. 448. Under the heading of Notices, provision is usually made for the manner in which notices are to be given. This Article which should not conflict with the provisions as to Notices generally is regarded as providing a special code for meetings. See *Pavilion Newcastle-upon-Tyne*, 1911, W.N. 235. Unless in very large companies, the mode of notice by advertisement either as the sole or as an additional means of intimation to members should not be adopted. Where any extraordinary resolution is to be passed, section 69 of the Act must be kept in view. The extraordinary resolution must be set out in the notice, and the intention to propose it as an extraordinary resolution must be specified. As to special resolutions, see *Company Law and Practice*, p. 128, *North of Scotland and Orkney and Shetland Steam Navigation*, 1920, 1 S.L.T. 21, and *E. Prill*, 1916, 2 Ch. 57. In regard to notices generally, "trickiness" ought to be avoided, or it may entail the reduction of resolutions passed upon notices open to this criticism. See *Oriental Telephone and Electric*, 1915, 1 Ch. 503, and *Pacific Coast Coal Mines*, 1917, A.C. (J.C.) 607.

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69. All business shall be deemed special that is transacted at an extraordinary [general] meeting or at an ordinary [general] meeting with the exception of sanctioning [or declaring] a dividend, and the consideration of accounts, balance sheets, and the ordinary reports of the directors and of the auditors, the appointment or re-election of directors and auditors and the adjustment of their remuneration and any other business expressly authorised by these Articles to be done at an ordinary meeting shall be likewise deemed special [subject to the right of the members present at the statutory meeting to discuss any matter relating to the formation of the company or arising out of the report to be laid before that meeting with or without previous notice and to no resolution being passed thereanent of which notice has not been given in accordance with these Articles].

Table A—50.

50. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

70. No business, except the declaration of a dividend [or the adjournment of the meeting] shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. [Three] members present personally [and holding or representing by proxy not less than [one-tenth] of the issued share capital] shall be a quorum.¹

Table A—51.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

¹ Sometimes the composition of the quorum is made the subject of a substantive Article. The quorum ought to be present throughout. See *Company Law and Practice*, p. 448. It is irregular, it is thought, to provide as is sometimes done for a quorum consisting of, say, "three members present personally or by proxy." One member, though holding proxies for other members, cannot, except in very exceptional circumstances, constitute a meeting. See *Company Law and Practice*, p. 120. The provision in the Article for the holding of a substantial part of the issued share capital by the members present, either personally or as proxies, makes the quorum really representative.

71. If within half-an-hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved, and in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum is not present, those [or any two] members who are personally present shall be a quorum, and may transact the business for which the meeting was called.¹

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52. If within half-an-hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and, if at the adjourned meeting a quorum is not present within half-an-hour from the time appointed for the meeting the members present shall be a quorum.

Table A—52.

72. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

Table A—53.

73. If there is no such chairman, or if at any meeting he is not present within [ten minutes] after the time appointed for holding the meeting, or is unwilling to act as chairman, the meeting shall choose one of their members to be chairman.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

Table A—54.

or

[73. The chairman of the directors shall be entitled to take the chair at every general meeting, or if there be no chairman or if at any meeting he shall decline or if he shall not be present within [fifteen] minutes after the time appointed for holding such meeting, the members personally present shall choose another director as chairman, and if no directors be present or if all the directors present decline to take the chair then the meeting shall choose one of the members to be chairman.]

Variation
upon 72 and
73.

¹ As to adjourned meetings, see *Scadding v. Lorant*, 1851, 3 H.L.C. 418, and *McLaren v. Thomson*, 1917, 2 Ch. 261.

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74. The chairman may, with consent of the meeting, adjourn any meeting from time to time, and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place and no notice of an adjourned meeting, unless there shall be an interval of [] clear days or more, shall be necessary.¹

Table A—55.

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

75. Every motion [and question] submitted to a meeting shall be decided [in the first instance] by a show of hands, unless before or upon the declaration of the result of the show of hands, a poll is directed by the chairman or is demanded [in writing] by [one or more] members present personally [or by proxy, and entitled to vote] at the meeting, [holding of the capital represented at the meeting], and unless a poll be so directed or demanded, a declaration by the chairman that a resolution has been carried [or carried by a particular majority or lost or not carried by a particular majority] and an entry to that effect in the minute book of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

or

Variation.

[75. At any general meeting, unless a poll is directed by the chairman or demanded by a member or members holding or representing by proxy or entitled to vote in respect of at least [one-fiftieth] part of the paid-up capital of the company or in the case of an extraordinary resolution or a special resolution being

¹ Article 55 of Table A desiderates notice of adjournment where the date for the adjourned meeting is ten days or more ahead. An "interval" of so many days means "clear" days. See *Company Law and Practice*, p. 448.

submitted to be passed or confirmed, unless a poll is demanded by at least [three] persons for the time being entitled to vote, a declaration by the chairman that a resolution has been carried, [or carried by a particular majority, or lost or not carried by a particular majority], and an entry to that effect in the book of proceedings of the company shall be conclusive evidence of the fact.]¹

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution. Table A—56.

76. If a poll is directed or demanded it shall be taken in such manner and at such time and place, and either at once or after an interval or adjournment not exceeding [seven] days thereafter, as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company at the general meeting at which such poll was demanded.²

57. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. Table A—57.

77. In case of an equality of votes at any general meeting, the chairman shall, both on a show of hands and at the poll, have a casting vote in addition to the vote or votes to which he may be entitled as a member.

¹Section 69 of the Act must be kept in view in regard to the demand for a poll in the case of extraordinary or special resolutions.

²The fixing of a subsequent date for the taking of a poll is not an adjournment of the meeting. *Tati Concessions*, 1913, 1 Ch. 292. Where two resolutions are voted separately upon and a poll is demanded, the poll must be taken as regards each resolution. *Blair Open Hearth Furnace*, 1913, 108 L.T.R. 665. It is optional to express this Article in negative form so that no poll may be demanded upon such questions as the election of a chairman or the propriety of adjournment.

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58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

Table A—58.

78. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith, but if demanded on any other question shall be taken at such time as the chairman directs.¹

Table A—59.

59. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

79. The demand of a poll shall not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.²

80. No business shall be brought forward or discussed after any meeting is declared by the chairman at an end and the chair has been vacated by him.²

81. Two meetings may be convened by one and the same notice for the purpose of passing a special resolution, and no exception shall be taken to such notice on the ground that it only convenes the second meeting contingently on such resolution being passed by the requisite majority at the first meeting.³

82. Any member entitled to vote may submit any resolution to an ordinary meeting, on giving not less than [twenty] clear

¹ If Article 76 is adopted, this Article should be omitted.

² These Articles 79 and 80 are not commonly inserted. Their subject matter seems implied.

³ The inclusion of this Article saves separate notices for each meeting and allows of the second meeting being contingently called. Without such authority in the Articles this procedure could not be adopted. See *Company Law and Practice*, p. 129. See *North of Scotland and Orkney Steam Navigation*, 1920, 1 S.L.T. 21. But two meetings without special provision may be called by one notice, provided the convening of the second meeting is absolute, and this practice is frequently adopted. Many reductions of capital and Memorandum "Objects" alterations, initiated by such notices, have been confirmed by the Court of Session after the usual reports from men of business. No special authority in the Articles is required.

days' previous notice, by leaving a copy of the terms of the resolution at the registered office of the company under his hand at least [twenty] clear days before the day of such meeting, and such resolution shall be entered in the notice convening the meeting.¹

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Company.VOTES OF MEMBERS.²

83. Every member present in person shall have one vote only upon a show of hands and upon a poll every member [present in person or by proxy] shall have one vote for every share held by him [and if and when the shares are converted into preference and ordinary stock every member upon a poll shall have [one] vote for each £ of preference stock and [four] votes for each £ of ordinary stock held by him.]

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder. Table A—60.

or

[83. Every member shall have one vote in respect of every share held by him, except upon a show of hands, when he shall have one vote only.] Variation.

84. If two or more persons are jointly entitled to shares, and to vote in respect thereof, such one of their number as shall be appointed by them [or by a quorum [or majority] of their number] in writing under their hand delivered to the secretary, whom failing, the member who stands first in the register of members, as one of the holders of such shares, and no other, [or in place of "and no other", or in the absence of such first registered [or senior] member, any other joint holder [unless prohibited by the terms of any proxy or mandate lodged with the company], shall be entitled to vote in respect of the same [subject to the proviso that the executors or administrators of a deceased

¹ This Article may prove useful, but it predicates a knowledge of the probable date of the meeting to be called, it may be, on seven days notice only.

² The company or the promoters can regulate the right of voting in any manner, and, if desired, voting rights may be denied to any particular class of shareholders. A registered holder of shares, but truly holding in security, may be compelled to vote according to the wishes of the beneficial owner where he has come under obligation by back letter to do so. *London and Cosmopolitan Mining*, 1916, 1 Ch. 200.

Form No. 2. member in whose name shares stand shall for the purposes of voting be deemed joint holders].¹

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Table A—61.

61. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

85. If any member shall be *non compos mentis*, or a minor, or under guardianship he may vote by his *curator bonis*, curator, committee, or other legal guardian; and if more than one, by any one of such guardians, attending personally or by proxy.

Table A—62.

62. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, *curator bonis*, or other person in the nature of a committee or *curator bonis* appointed by that Court, and any such committee, *curator bonis*, or other person may, on a poll, vote by proxy.

86. No member [or other person] shall be entitled to act or vote at any general meeting [whether personally or as proxy or representative for another member], unless all calls [or other sums] due upon the shares held by him or by such other member

¹ The proviso sometimes added is significant of the difference in practice as to the recognition of trusts in Scotland and their non-recognition in England or Ireland. Executors do not appear as such in English or Irish companies, and where more than one in number, they are, in fact, treated as joint owners. Frequently, mandates or requests are given by or for joint holders to send notices or dividend warrants to particular parties as their mandatories or agents, but in dealing with statutory meetings, it is undesirable to rely on these mandates or requests in regard to notices therefor. The acceptance by companies of such requests, where not in strict accord with their constitutions, is a matter of friendly business facilities. In the case of joint holders, the Articles usually provide for notice to the member of the group entered first on the register. Trustees or executors should be treated for such purposes as joint holders, and the first entered member should be regarded as the proper party to grant a proxy. A majority of trustees or executors in the usual case cannot appoint a proxy without the concurrence of the trustee or executor first entered, because he has alone the title to grant the proxy. The Articles may, however, provide differently. It has also to be kept in view that a body of executors and a group of joint holders are not analagous. Different considerations apply to each of such groups under English or Irish law on the one hand and under Scots law on the other. See *Perrett's Trustees*, 1909, S.C. 522. Reference is made to the note to Article 16 of Articles for Private Company, Form No. 5, p. 266.

have been paid; [and no member, after the expiration of [three] months from the incorporation of the company, shall be entitled to act or vote at any general meeting held thereafter in respect of any shares which he has acquired by transfer unless he has been registered as holder of the shares in respect of which he claims to act or vote at least [three] months prior to the date of the meeting at which he proposes to act or vote.]¹

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63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid. Table A—63.

87. Votes may be given either personally or by proxy.

64. On a poll votes may be given either personally or by proxy. Table A—64.

88. [The deed or document appointing a [or Any] proxy shall be in writing under the hand of the appointer [or his attorney duly authorised]; or, if such appointer is a corporation, under its common seal [or under the hand of any director, manager, secretary, or other officer thereof signing on its behalf]. No person, unless the appointee of a corporation, shall be qualified as a proxy who is not a member of the company and entitled to vote as such at the meeting for which the [deed or document of] proxy is granted; nor unless the [deed or document of] proxy [and the power of attorney, if any, under which it is signed, or a notarial certified copy thereof] shall be deposited at the office of the company at least two clear days [or not less than forty-eight hours] before the time for holding the meeting, or adjourned meeting, as the case may be, at which he proposes to vote. No [deed or document of] proxy shall be valid after the expiration of six [or twelve] months from the date of its execution, except that it may be used at any adjournment of the meeting for which it was originally intended to be given, or unless it is a power of attorney containing a general power to act and vote for a

¹ The latter part of this Article is based on Article 47 of Table A as annexed to the Act of 1862. It is omitted from the present Table A. But where any Article contains a provision similar to the part in question, care must be taken that it is not breached at any meeting by irregular voting. Its non-observance may render a resolution invalid. See *Bridport Old Brewery*, 1867, 2 Ch. Ap. 191. The words in brackets "or other person" include the representative of a company member. Such representative may not be a member of the company, but he is entitled to act. See section 68 of the Act.

Form No. 2. member [absent abroad] at meetings of the company, and which
 Public power of attorney, if once duly exhibited to the company, shall
 Company. not require to be again exhibited to the company.¹

Table A—65.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

Table A—66.

66. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid.

or

Variation.

[88. Any company, being a member of the company, may, in pursuance of section 68 of the Act, by resolution of its directors, authorise any one of its directors, secretary, or other official, or any other person to act as its representative at any meeting of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual member of the company [and he may be appointed a proxy for such company and, unless a proxy be executed in his favour, his authority to act as the representative of such company may be evidenced by the lodging at the office of the company of a certified excerpt from the minute of meeting of the directors of the company at which he was authorised to act as its representative] [and except as

¹ See *Company Law and Practice*, p. 452. Such an Article does not apply to foreign companies in requiring the use of a common seal if exempt by the law of their domicile from its use. *Free State Rand*, 1914, 1 Ch. 382. Proxies as a rule generally include "any" or "every adjournment" when issued for particular meetings. This would seem also to be implied from the mandate to attend the particular meetings so as to dispense with the necessity for fresh proxies where the original proxies are silent as to adjournment. This Article combines Articles 5 and 66 of Table A.

herein provided or as provided by the Act, no person shall be appointed a proxy who is not a member of the company.]

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or

[88. No member present only by proxy shall be entitled to vote on a show of hands, unless such member is a corporation present by proxy who is not a member of the company, in which case such proxy may vote on a show of hands as if he were a member.]

Variation.

89. [The deed or document appointing a] or A proxy [need not be subscribed before a witness and unless otherwise approved of by the directors] shall as nearly as circumstances permit be in the form or to the effect as follows:—

“THE , LIMITED.

“I, [of ,
in the of ,] being a member of
the , Limited, [and entitled to
share (or shares), [or votes] do hereby appoint (*name, designation, and address*) as my proxy, [or failing him (*name, designation, and address*) or failing him (*name, designation, and address*)] to vote for me and on my behalf at the [statutory] ordinary [or extraordinary] general meeting, to be held on the day of
next, and any [or every] adjournment thereof.

“As witness my hand this day of
in the year 1919.

“[or Signed this day of 1919.”]¹

¹ See *Company Law and Practice*, p. 453. “Whom failing” is a common variant for “or failing him.” It is desirable to dispense with any witness and to leave to the granter of the proxy as little otherwise to do as possible, and it has been found advantageous in practice to resort to a form of proxy which only requires the signature of the granter. The portions in the style here given dealing with the name and designation of the granter and the number of shares held by him or the number of votes to which he is entitled can be omitted. In sending out the proxies the names of the holders usually appear as filled in by the direction of the Board. The designation of the granter and particulars as to his voting rights can be added by the company officials before sending the proxies out or after their return. This facilitates any poll voting.

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Table A—67.

67. An instrument appointing a proxy may be in the following form or in any other form which the directors shall approve:—

“COMPANY, LIMITED.

“I, of , in the county of

being a member of the

Company, Limited, hereby appoint ,

of , as my proxy to vote for me and on

my behalf at the [ordinary or extraordinary, as the case

may be] general meeting of the company to be held on

the day of , and at any

adjournment thereof.

“Signed this day of .”

90. A proxy to vote shall be deemed to confer power to demand a poll.¹

91. Any person entitled [under the transmission Article] to transfer any shares may vote at any general meeting in respect thereof in the same manner as if he were the registered holder thereof, provided that, unless the directors shall have previously admitted his right to vote at such meeting in respect thereof, he shall satisfy the directors of his right to transfer such shares; and in every case when a member has become bankrupt [or is in liquidation,] such member shall not while bankruptcy [or liquidation] continues, be entitled to be present or vote at any general meeting.²

92. In case of any dispute as to the admission or rejection of any vote arising at any meeting the chairman shall determine the same, and his determination made in good faith shall be final and conclusive and no vote at such meeting shall thereafter be impugned.³

or

¹ This Article can be omitted, if Article 75 is retained according to its terms.

² Without an Article of this nature, no trustee of a deceased or bankrupt shareholder can vote. The purpose of the Article is fair. See *North British Property Investment*, 1905, 7 F. 390. As to “liquidation,” see Article 47 and note thereon.

³ This Article in either form practically makes the chairman an arbiter. It would seem that under such an Article his ruling on any vote could only be impeached on the ground of fraud. *London and Northern Assets*, 1899, 1 Ch. 550. The alternative form is taken from the Article as considered in this case. The Article is sufficient to protect the conclusion of the meeting from challenge owing to proxies falling on death or revocation, or owing to transfers of shares prior to the meeting at which they are used.

[92. No objection shall be made to the validity of any vote excepting at the meeting at which such vote shall be tendered or at the meeting (if any) to which such meeting shall be adjourned in the regular course of business, and every vote, whether given in person or by proxy, not disallowed at any one of such meetings, shall be deemed valid for all purposes whatsoever.] **Form No. 2.**
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Company.
Variation.

DIRECTORS.

93. Until otherwise determined by a general meeting, the number of directors shall not be less than [] nor more than [].

94. The first directors shall be [and the first chairman shall be the said].¹

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the Memorandum of Association. **Table A—68.**

or

[94. So long as [] shall retain shares in the company of the nominal value of £ [], the said [] Variation.

shall be entitled to require the company to appoint as a director either himself or some fit person nominated by him subject to his being otherwise qualified to act as a director in accordance with these Articles; and during the period aforesaid the director so appointed (whether himself or his nominee) shall not be removed or be bound to retire, without his written consent and the rights by this Article conferred on the said []

[], shall be personal to himself, and shall be exercisable by him from time to time in case the person other than himself so appointed ceases to be a director during the said period.]²

95. The qualification of every director shall be the holding [in his own (and beneficial and exclusive) right] of at least [100] shares of the nominal value of £ [], and it shall be his duty to

¹ See terms of Article 117.

² The variation Article indicates the variety of special arrangements that may be provided for. Such arrangements are, however, more frequent in the case of private companies.

Form No. 2. acquire his qualification within [one month] of his election [and upon his failure to do so, he shall be deemed to have applied to the company for the said shares, and he shall be forthwith entered in the register as a member in respect of such shares.]¹

or

Variation. [95. The qualification of every director [except a first director] shall be the holding in his own name [and beneficial and exclusive right] of shares of the company of the nominal value of £ [subject to the proviso], that any director acting before acquiring his qualification, shall in any case acquire the same within [one month] from his appointment; and unless he shall do so he shall be deemed to have agreed to take the said shares from the company and the same shall forthwith be allotted to him accordingly, and in the event of the conversion of the shares into preference and ordinary stock, the qualification of a director shall be the holding in his own name of £ nominal stock of which at least £ shall be ordinary stock.]²

Table A—70. 70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 73 of the Companies (Consolidation) Act, 1908.

96. The remuneration of the directors shall from time to time be determined by the company in general meeting, and the sum

¹Section 73 of the Act prescribes that the qualification must be found within two months, but the Articles may prescribe a shorter period; and by the practice of the Stock Exchange the period of one month only should be allowed by the Articles, within which directors must obtain their qualification shares, and only first directors should be allowed by the Articles to act before so acquiring their shares. Section 72 of the Act requires compliance with regard to first directors who must either sign the Memorandum for at least their qualification *quota*, or sign and file a contract with the Registrar to take and pay therefor. See *Company Law and Practice*, p. 439, as to the phrase "in his own right." "In his own and exclusive right" connotes that the director is not holding as joint proprietor. Where a Stock Exchange quotation is desired, the Articles must prescribe a qualification holding for the directorate; but, irrespective of this requirement, the prospective solidity of a company is clearly marked not so much by such a holding being imperative under the Articles as by the extent of the holding the directors are expected to take. See the London Stock Exchange Rules printed in the Appendix.

²Contrast "In his own name" with the phraseology of the alternative form.

so determined shall be divided among them in such manner as they shall agree, and failing agreement, then equally.¹

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69. The remuneration of the directors shall from time to time be determined by the company in general meeting. Table A—69.

or

[96. The directors shall be paid out of the funds of the company by way of remuneration for their services at the rate of £ per annum for each director, with an additional £ per annum for the chairman or] the chairman of the directors shall receive by way of remuneration for his services a sum [to be held as accruing from day to day or] at the rate of £ per annum, and the other directors shall each receive for their services a sum at the rate of £ per annum [together with such further sums as shall from time to time be determined by the company in general meeting, and unless otherwise determined by the company, such further sums shall be allocated to the directors according to their respective shares of the said fixed remuneration], [and in addition every director shall be entitled to his travelling and hotel expenses in attending to and returning from meetings of directors or of their committees, and any other expenses properly and necessarily expended by them on the business of the company, but in the case of any director serving only for part of the period in respect of which the remuneration is payable, he shall receive only such sum as is proportioned to his period of service, and any resolution of the directors as to foregoing, reducing, or postponing payment of their remuneration shall be binding upon each and all of the directors.] Variation.

97. If any of the directors [being willing] at the request of the company or of the directors shall perform any extra or

¹ See *Company Law and Practice*, p. 454, *et seq.*, as to questions regarding remuneration of directors. The current incidence of taxation has suggested a ratio for the fixing of remuneration by a provision in this form:—"such a sum as after deduction of income tax at the full rate then current will leave a clear sum at the rate of." It may be suggested that it is more equitable to provide for payment of directors' remuneration "out of the profits" than "out of the funds" of the company as provided in the variation. As to payment of hotel and travelling expenses, see *Company Law and Practice*, p. 455. Directors cannot take payment from the company of such expenses unless they have authority in the Articles. See Variation Article.

Form No. 2. special services of any kind, or go or reside abroad for any of the purposes of the company, the company shall remunerate such director, either by a fixed sum or by a percentage of profits, or otherwise as may be determined by the company, and such remuneration may be either in addition to or in substitution for his share in the remuneration above provided, and his remuneration, together with such sum as may be allowed him for travelling, hotel, or other personal expenses by the company, shall be charged as part of the ordinary working expenses of the company.¹

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Company.

POWERS AND DUTIES OF DIRECTORS.

98. The management of the business of the company shall be vested in the directors, and, in addition to their express powers and authorities under these Articles, they may exercise all such powers, and do all such acts as may be exercised or done by the company, in virtue of the Memorandum of Association or otherwise, and are not hereby, or by the Act, expressly directed or required to be exercised or done by the company in general meeting; but subject, nevertheless, to any directions from time to time made by the company in general meeting, and provided that no direction shall invalidate any prior act of the directors which would have been valid if such direction had not been made.²

¹ In such circumstances, or it may be owing to absence abroad unconnected with the business of the company, a director may desire to be represented on the Board by his nominee; but it is thought that this arrangement, unless in the case of companies with considerable foreign interests, is not very acceptable in Scotland. Accordingly, this Form does not include Articles for the appointment of "alternate," "assistant," "substitute" or "deputy" directors. See styles of such Articles in Articles for Private Company, Form No. 5, pp. 269 and 272.

² Article 71 of Table A is somewhat involved, and it is thought that the Article here suggested is clearer and equally comprehensive. Such an Article does not impinge upon the powers of the company in regard to the election and control of its directors and their remuneration. See *W. Foster & Son*, 1916, 1 Ch. 532. But as to the operation of such an Article otherwise, see *Company Law and Practice*, p. 457 *et seq.* "Regulations" appears to be used in a double sense in Article 71 of Table A as meaning either the Articles of Association or a particular direction of the company in general meeting. To avoid any ambiguity, it is preferable to use the word "direction" as referable to any special instruction of the company. See *Stiebel's Company Law and Precedents*, p. 360, note (g). It is thought that the view expressed by L. Loreburn in *Quin & Axtens*, 1909, A.C. 442 is unsound.

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, or by these Articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these Articles, to the provisions of the said Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

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Table A—71.

99. Without prejudice to the powers by law vested in directors, or to the powers conferred upon them generally by the preceding Article, or all other powers conferred upon them by these Articles, the directors shall have the following powers:—¹

- (1) To carry out the agreement [and underwriting contract] specified in Article , or [in clause III., sub-clause () of the Memorandum of Association].
- (2) To pay all or any of the costs, charges, and expenses

¹ As in the case of the "Objects" clause of the Memorandum, the specification of the powers of the directors has been the subject of much laborious expansion in the Articles. The Articles form the proper document for the description of such powers. Many of the powers, however, specifically taken are absolutely superfluous. The administration of few companies, if any, would suffer by the excision of this Article altogether, and specially so, if the "Objects" clause in the Memorandum embraces, as it should not, these particular powers. The specific powers here set out are not exhaustive. It may be well to compare them with the detailed powers in the "Objects" clause of the Memorandum so as to guard against inconsistency or repugnancy. The Articles cannot confer powers upon the directors outwith the "Objects" clause of the Memorandum or the Act. Of course, if the "Objects" clause does not include specific powers, it may be advisable to have such an Article as this; but it appears to be unnecessary to insert, as is sometimes done, a detailed code in both the Memorandum and the Articles. See General Notes upon Memorandum of Association, Form No. 1, and the various clauses in Appendix C to that Form, and relative Notes. It is expected that Parliament may stereotype the list of powers that directors should commonly have or which may be inherent to their office, so that the Memoranda in future may not be encumbered by the enumeration of all sorts of powers truly foreign to the "Objects" clause.

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preliminary and incidental to the promotion, formation, establishment, and registration of the company, including usual brokerage charges [or contract with any person to pay the same].

- (3) To exercise the powers conferred on the company by section 89 of the Act, but so that the commission shall not exceed [10 per cent.] on the shares in each case offered by the company at any time to the public for subscription.¹
- (4) To sell, feu, exchange, lease, hire out, dispose of, or deal with any of the property, real and personal, or rights or privileges of the company [at home or abroad] in the ordinary course of its business, in such manner, and upon such terms and conditions, and for cash or in consideration of shares, bonds, debentures, mortgage debentures, debenture stock, or other securities of any company having objects analogous to any of the company's objects, or otherwise as they may think fit, and they may acquire and hold shares in any such company.

or

Variation.

- [(4) To sell, exchange, or otherwise dispose of, deal with, or turn to account, any shares, or other securities acquired or agreed to be acquired, and generally to vary from time to time all investments or securities of the company.]
- (5) To feu, exchange, hire, lease, or otherwise acquire for the company any property, rights, or privileges which the company is authorised to acquire at such price, and generally on such terms and conditions as they think fit.
- (6) To enter into any arrangement with any person or company, carrying on any business similar to that of the company, for mutual concessions, or for any joint working or combination, or for any restriction

¹There appears to be no statutory limit in the amount or rate of commission, and as it may thus be 99 per cent., the Editor has seen 100 per cent. inserted in Articles. The provisions of section 89 of the Act seem thus liable to abuse. See Article 12 of this Form No. 2, p. 59, and note thereto.

upon competition, or for any pooling of business or profits that may seem desirable, and to carry the same into effect.

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- (7) To appoint, and at their discretion, dismiss, remove or suspend, such managers, secretaries, solicitors, officers, officials, clerks, agents, and servants, for permanent, temporary, or special services as they may from time to time think fit, and determine their duties and fix their salaries or emoluments, and require or dispense with security [or a declaration of secrecy] in such instances, and to such amount as they think fit, and if appointed from the directors themselves, they shall be entitled to such salaries or remuneration as the directors may fix over and above their fees as directors.
- (8) To enter into and to complete dispositions, assignments or other conveyances, transfers, contracts or agreements and writings of every kind requisite for or incidental to or connected with any of the objects of the company or conducive to their attainment.
- (9) To appoint, whenever they deem it expedient, a temporary substitute for the secretary [who shall for the purposes of these Articles be deemed the secretary].¹
- (10) To give to any officer or other person employed by the company a commission on the profits of any particular business or transaction or a share in the general profits of the company and such commission or share of profits shall be treated as part of the working expenses of the company.
- (11) To establish from time to time, local boards or local managing or consulting committees in the United Kingdom or abroad; appoint, as members of such boards or committees, such persons; delegate to or confer upon them such powers and authority (except the powers to issue debentures or debenture

¹ The words in brackets can go out where the Interpretation Article is conform to Article No. 3. The provision for a temporary secretarial substitute is very useful.

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stock, to burden, mortgage or charge the heritable property of the company, and to make calls) as they think fit; establish offices or agencies or any other machinery for transacting or conducting the company's business in any country or place; and to remove or suspend without assigning any reason and at any moment all or any of the agents, officers, servants, or persons appointed or employed in connection therewith.

or

Variation.

- [(11) To provide from time to time for the management of the affairs of the company abroad in such manner as they think fit, and, in particular, to appoint any person to be the attorneys or agents of the company, with such powers (including power to sub-delegate), and upon such terms as may be thought fit.]
- (12) To give or allow any pension, gratuity, or compensation to any employee of the company, or his widow or children, that may appear to them just or proper, whether such employee, his widow or children, have or have not a legal claim therefor upon the company.
- (13) To pay at their discretion for any rights acquired by, or services rendered to the company, either wholly or partially in cash or in shares, bonds, debentures, mortgage debentures, debenture stock, or other securities of the company; and any such shares may be issued as fully paid up, or with such amount credited as paid up thereon as may be agreed upon; and any such bonds, debentures, mortgage debentures, debenture stock, or other securities, may be either specifically charged upon all or any part of the property of the company and its uncalled capital, or not so charged.¹
- (14) To invest from time to time, subject to the provisions of Article [2] hereof, the capital and other moneys of the company in the purchase, or lend the same upon the security, of shares, stocks, debentures,

¹ Any security to be effectual under Scottish Law must be specific. Floating charges are impossible over Scottish assets. See *Company Law and Practice*, p. 189. As to intimation of the assignation of uncalled capital, see *Union Club*, 1906, 8 F. 1143.

debenture stocks, bonds, mortgages, obligations, **Form No. 2.**
 and securities of any kind, issued or guaranteed **Public**
 by any company, corporation, or undertaking **Company.**
 of whatever nature constituted, or carrying on
 business in the United Kingdom of Great Britain
 and Ireland, or in any colony or dependency or
 possession thereof, or in the United States of
 America, or in any other foreign Country or State,
 or issued or guaranteed by any Government,
 Sovereign Ruler, Commissioners, public body or
 authority—supreme, municipal, local or otherwise—
 in the United Kingdom or abroad.

or

- [(14) To lend money upon the security of heritable pro- **Variation.**
 perty situated in any part of the world, of any
 description or tenure, or of any leasehold or other
 interest therein.]

or

- [(14) To invest [and lend] any of the moneys of the **Variation.**
 company not immediately required for the purposes
 thereof upon such [heritable and moveable] securi-
 ties and in such manner as they may think fit,
 [and that free from all statutory restrictions im-
 posed on the investment of trust funds, and from
 time to time to vary or realise such investments,
 subject to Article (2).]

or

- [(14) To lend and advance money or give credit to such **Variation.**
 persons, with or without security, and on such terms
 as may be thought fit, and in particular to persons
 dealing with the company, and to give guarantees
 or become security for any such persons.]

- (15) To transact or carry on all kinds of agency business,
 and in particular with reference to the investment
 of money, the sale of property, and the collection
 and receipt of money.¹

¹ This power can only be validly inserted where such business is
 within the "Objects" clause of the Memorandum.

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- (16) To acquire any shares, or other securities by subscription, tender, purchase, exchange, syndicate participation, or otherwise to subscribe for the same, either conditionally or otherwise, to guarantee the subscription thereof, and to exercise and enforce all rights and powers conferred by or incident to the ownership thereof.
- (17) To receive money on temporary loan, and to open a cash credit with any bank, and from time to time to borrow¹ or raise otherwise any sum or sums of money for the purposes of the company, provided in the absence of a special resolution of the company that the total amount at any one time owing in respect of moneys borrowed shall not exceed [one-half] of the nominal amount of the [share] capital, and to secure the repayment of such moneys, by the issue of bonds, mortgages, debentures, or debenture stock, or other obligations, terminable, redeemable, or perpetual, and upon such terms as to priority, premium, price, or otherwise as they may think expedient, and in security of moneys borrowed or raised, to dispoise in security, mortgage, pledge, or charge the whole or any part of the property, assets, or revenue of the company, including its uncalled capital, and to give the lenders or persons taking such bonds, mortgages, debentures, debenture stock, or obligations, powers of sale, and other usual or necessary powers; and for securing the repayment of any money so borrowed or raised, with interest, to make and carry into effect any arrangements which they deem expedient, by conveying any property of the company to trustees, or otherwise, and to grant all deeds and writings necessary for completing and securing such loans and subject to the said proviso, to pay for any property, assets, rights or things acquired by the company, or services rendered to the company, by the issue of such

¹For Stock Exchange purposes, the powers of the directorate in regard to borrowing must be limited. See London Stock Exchange Rules printed in the Appendix,

bonds, mortgages, debentures, or debenture stock, or otherwise to part with such property, rights, or things for any valuable consideration.¹

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or

- [(17) To exercise from time to time, at their discretion, the borrowing and other powers conferred upon them by Articles 127 to 134 both inclusive hereof.] **Variation.**
- (18) To secure the fulfilment of any contracts or engagements entered into by the company, by disposition, assignation, mortgage, charge or other security over or of all or any part of the property and assets of the company and its unpaid capital for the time being, or in such other manner as they may think fit.
- (19) To give any guarantee in relation to the repayment of any bonds, debentures, debenture stock, obligations, or other securities, or the payment of any interest or dividends thereon.
- (20) To draw, in the ordinary course of business of the company, cheques on the company's bank account or accounts, issue, make, accept, draw, or endorse any promissory note, bill of exchange, bankers, draft, cheque, charter party, bill of lading, or other such like instrument on behalf of the company, and to empower, if they see fit, any [one or more] of their number, along with the secretary, or other officer of the company, to exercise these powers [and an excerpt from their minutes certified by [two] of their number shall be sufficient evidence of such authority].

or

- [(20) To determine from time to time in what manner the banking accounts of the company shall be kept and operated upon.] **Variation.**
- (21) To affix the seal of the company to, and subscribe and otherwise execute and complete, or cause to be executed and completed, agreements, assignations, conveyances, grants, transfers, mortgages, bonds, debentures, debenture stock, certificates, share

¹ See note to subhead (13) of this Article.

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certificates, leases, discharges [releases,] and all other deeds or documents, and to empower any [two] of their number to execute these powers.¹

*or***Variation.**

- [(21) To determine who shall be entitled to sign on behalf of the company, contracts, discharges, receipts, and documents relating to the general business of the company, other than negotiable instruments and the like.]

*or***Variation.**

- [(21) To make and give receipts or other discharges for money payable to the company, and for the claims and demands of the company.]
- (22) To execute, in the name and on behalf of the company, in favour of any director or other person who may incur or be about to incur any personal liability for the benefit of the company, all agreements or obligations for his indemnity and such bonds and dispositions in security or mortgages of the company's property [and including uncalled capital] as they think fit for the security of his relief therefrom or otherwise; and any such bonds or mortgages may contain a power of sale and such other powers and provisions as shall be agreed on.²
- (23) To set aside out of the profits of the company before recommending any dividend such sums as they think proper as a reserve fund to or for meeting contingencies [special dividends], equalising dividends, repairing, improving, and maintaining any of the property of the company, and such other purposes as the directors in their absolute discretion may deem conducive to the interests of the company; to invest [subject to Article 2 hereof] such sums so set aside upon such investments as they may think fit, and from time to time to vary, alter, deal with or dispose of all or any of such investments for the benefit of the company; to divide the reserve fund into such special funds as they think fit; and to

¹ "Releases," *anglice* for "discharges," is inappropriate in Scottish Articles.

² See note to subhead (13) of this Article.

employ the reserve fund, or any part thereof, in the business of the company, and that without being bound to keep the same separate from other assets of the company. Form No. 2.
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- (24) To accept from any member on such terms and conditions as shall be agreed, a surrender of any of his shares.
- (25) To refer any claims or demands by or against the company to arbitration, and observe and perform the awards.
- (26) To institute, conduct, defend, compromise, or abandon any legal proceedings by and against the company, or its officers or otherwise, concerning the affairs of the company.
- (27) To compound and allow time for payment or satisfaction of any debts due, and of any claims or demands by or against the company.¹
- (28) To appoint any one, either out of their own number or not, to act on behalf of the company in all matters relating to insolvents and bankrupts.
- (29) To appoint any person or persons to accept and hold in trust for the company any property belonging to the company, or in which it is interested, and execute and do all such deeds and acts as may be requisite in relation to any such trust, including the power to remove any such trustees,² and to provide for the remuneration of such trustees.

100. The directors shall comply with the provisions of the Act, and in particular with the provisions of the following sections thereof, namely:—Sections 25 and 26 in regard to keeping a register of members, and sending to the registrar of companies an annual list of members and a summary of particulars relating thereto; sections 42, 43, 44, 45, and 51 as to sending

¹ The Editor has seen power taken to compound criminal proceedings, *i.e.*, to enter into *pacta illicita*. Perhaps this note, although compounding a felony is not an indictable offence in this country, may prevent its repetition. See *Lamson Paragon Supply*, 1914, S.C. 73.

² The power to remove is convenient and may save a special application to the Court under the Trusts (Scotland) Acts, 1861 to 1891.

Form No. 2. to the registrar of companies notice of any consolidation, division, or conversion of shares, or increase and reduction of capital; section 62 as to sending to the registrar of companies notice of the situation of the registered office and of any change therein; section 63 as to publication of the name of the company; section 70 as to sending to the registrar of companies copies of special and extraordinary resolutions; section 75 as to keeping a register of directors and sending to the registrar of companies a copy thereof, and from time to time notifying him of any change among the directors; section 88 as to filing with the registrar of companies returns of allotments of shares; section 92 as to the delivery of share certificates; and section 100 as to keeping a register of mortgages [and charges] affecting the property of the company.¹

or

Variation.

[100. The company shall keep at the office a register containing the names, addresses, and occupations of its directors and managers, and shall send to the registrar of companies a copy of such register, and shall from time to time notify to the registrar any change that takes place in such directors and managers.]

DISQUALIFICATIONS OF DIRECTORS.

101. The office of a director shall be vacated *ipso facto*—

- (a) If he becomes bankrupt or insolvent, or suspends payment, or compounds with his creditors.²
- (b) If he is of unsound mind.
- (c) If he does not acquire the required amount of shares to qualify him for office within month after appointment [or election], or ceases to hold the same; and a person vacating office under this subsection shall be incapable of being reappointed [or re-elected] until he has obtained his qualification.

¹ See Article 74 of Table A and Article 134 in this form. If this comprehensive Article is adopted, then Articles under particular headings are superseded, *e.g.*, Articles 16 and 134. See note to Article 129.

² Sometimes the affairs of a company are in the hands of another company as managing director, but it is exceptional to provide for the liquidation of company directors, and in any event insolvency covers such a case.

- (d) If he shall absent himself [*or be absent*] from the meetings of the directors during a period of [] months, without special leave, duly minuted, of absence from the directors.¹ Form No. 2.
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- (e) If he is appointed auditor of the company.

or

- [(e) If he, without the sanction of any general meeting, accepts or holds any office or place of profit under the company other than that of managing director, manager, managing agent, agent, sub-agent, solicitor, secretary or trustee, or that of trustee for the holders of any of the debentures, debenture stock or other securities issued by the company.]² Variation.

77. The office of director shall be vacated, if the director—

Table A—77.

- (a) Ceases to be a director by virtue of section 73 of the Companies (Consolidation) Act, 1908; or
- (b) Holds any other office of profit under the company except that of managing director or manager; or
- (c) Becomes bankrupt; or
- (d) Is found lunatic or becomes of unsound mind; or
- (e) Is concerned or participates in the profits of any contract with the company:

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director: but a director shall not vote in respect of any such contract or work, and if he does so vote his vote shall not be counted.

¹ “be absent” is more stringent than “absent himself.” See *London and Northern Bank—McConnell*, 1901, 1 Ch. 728.

² It is invidious, although frequently done, to insert conviction for a crime or an indictable offence as a ground for *ipso facto* vacation of office. The appropriate remedy is removal under express provision made in the Articles therefor. In the desire to be comprehensive, many Articles enumerate the fact of removal as one of the determinants of office under this section; but like resignation, removal necessarily operates vacation of the office. This Article is intended to apply to different situations, and it should be confined to these. Provision might as well be made for the vacation of a directorship upon the expiry of the election period. The inference is clear from the terms of this Article that a director may hold any office other than that of auditor without incurring the risk of disqualification, but sometimes a proviso to this effect is specially added. See *Company Law and Practice*, p. 463, as to the legal effect of the provision for vacation *ipso facto* of office.

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102. No director [as such] shall be disqualified from, or vacate office by reason of his or any company or partnership, of which he is a member, contracting or having entered into contracts with the company, either as seller or otherwise; no contract entered into by or on behalf of the company with any company or partnership of, or in which, any director shall be a member or otherwise interested shall be reducible; and no director so contracting, or being employed by the company, or being such member or so interested shall be liable to account to the company for any profit realised by any such contract, by reason only of such director holding that office, or of the fiduciary relation thereby created; and any director having such interest where it does not appear on the face of the contract, must disclose it prior to the resolution of the directors at their meeting for the conclusion [*or making*] thereof, if his interest then exists and is known to him, or in any other case, at the first meeting of the directors after the acquisition of his interest or of his knowledge thereof; and no director [except the said] shall as a director vote in respect of any contract in which he is so interested, and if he do vote, his vote shall not be counted; [but this prohibition shall not apply to the Agreement mentioned in Article [5] hereof, or to any matters arising thereout, or to any contract by or on behalf of the company to give to the directors, or any of them, any security by way of indemnity, and it may at any time or times be suspended or relaxed to any extent by a general meeting]; and a general notice that a director is a member of any specified firm, company, or syndicate, and is to be regarded as interested in all transactions with that firm, company, or syndicate shall be a sufficient disclosure under this Article as regards such director and the said transactions; and it shall be unnecessary for such director after such general notice to give specific notice of any particular transaction with that firm, company, or syndicate.]¹

¹ This Article in more or less abbreviated form is frequently inserted and may be useful. See *Costa Rica Railway*, 1900, I Ch. 756, as to the validity and expediency of the Article. The circumstances will show how much of it ought to be adopted in particular cases. The Stock Exchange Rules as to quotations require the rights of directors under such an Article to be qualified as in the Form. See London Stock Exchange Rules printed in the Appendix. See also notes upon Article 5. It is for consideration in particular cases whether a proviso to this Article or a separate Article should be inserted to the effect that no director of the company shall, while he remains in office, be engaged in,

ROTATION OF DIRECTORS.

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103. At the first ordinary general meeting after the statutory general meeting of the company, and at every ordinary general meeting thereafter, one [*or one-third*] of the directors for the time shall retire from office; and the order in which first directors shall retire shall, failing agreement between themselves, be determined by ballot, subject to the proviso that a retiring director shall be eligible for re-election [provided he holds at that time, whether he be a first director or otherwise the qualification shares required by these Articles];

or

[103. One-third of the directors or other nearest number thereto to retire at the ordinary meeting to be held in the year 1921 shall, unless the directors agree among themselves, be determined by lot, and in every subsequent year one-third or other nearest number who have been longest in office shall retire, subject to the proviso that as between two or more who have been in office for the same period, the director or directors to retire shall, in default of agreement between them, be determined by lot, and such period during which time a director has been in office shall be computed from his last appointment or election where he has previously vacated office.] Variation.

78. At the first ordinary meeting of the company the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one-third, shall retire from office. Table A—78.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot. Table A—79.

80. A retiring director shall be eligible for re-election. Table A—80.

104. A director may retire from his office upon giving one month's notice in writing to the [secretary of the] company of

or connected with, any other similar trade, occupation, or business, unless with the written consent of his co-directors. In certain circumstances it is legitimate and incumbent to provide that directors may be engaged in similar companies, *e.g.*, shipping companies.

Form No. 2 his intention so to do, and such resignation shall take effect upon the expiration of such notice or its earlier acceptance.¹
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105. The company, subject to the provisions of Article 108, in general meeting shall elect a director in place of any director retiring [or resigning]; or ceasing to be a director by disqualification under these Articles.

or

Variation. [105. The company, subject to the provisions of Article 108, at any general meeting at which any directors retire in manner aforesaid, or whose office shall have been vacated by resignation or by disqualification under these Articles, shall fill up the vacated offices by electing a like number of persons to be directors, and without notice in that behalf may fill up any other vacancies.]

Table A—81. 81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

106. In the event of any directorship not being filled up at any meeting for the election of directors, such meeting shall stand adjourned to the same day in the following week at the same hour and place, and if no election is made at such adjourned meeting, the retiring director whose office is not filled up shall be deemed to have been re-elected at such adjourned meeting.

Table A—82. 82. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at the adjourned meeting.

or

¹ It is useful to have this Article. But the power to resign is implied without the special provision for resignation in the "Disqualifications of Directors" Article. According to the views of the Editor, it is preferable to have an independent Article and not to refer in that Article to the fact of resignation as a disqualification. See *Company Law and Practice*, p. 463. Under section 75 of the Act, every company must notify to the Registrar any change in its directorate. The duty to so intimate the fact of resignation lies on the company, and not upon the resigning director.

[106. If, at any general meeting at which an election of directors ought to be made, the place of any retiring director is not filled up, and no resolution is made thereat reducing the number of directors, such director shall continue in office until the dissolution of the ordinary general meeting in the following year, and so on from year to year until his place is filled up.]

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Variation.

107. The company in general meeting may from time to time increase or reduce the number of directors, and alter their qualification and their rotation in going out of office.¹

83. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office. Table A—83.

108. Any casual vacancy occurring among the directors may be filled up by the directors; but any person so chosen shall only retain his office until the next general meeting of the company after his appointment by the directors, and shall then be eligible for re-election.²

84. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director. Table A—84.

109. The directors shall have power from time to time [and at any time] to appoint any other persons to be directors [subject to the proviso that the total number of directors shall not at any time exceed the maximum number fixed by Article [93], and that no appointment under this Article shall have effect unless two-thirds at least of the directors in the United Kingdom concur therein], and any director appointed under the power conferred by this Article shall hold office only until the next following ordinary general meeting of the company, when he shall be eligible for re-election.

¹ The purpose of this Article as of Article 83 of Table A is to save the necessity of a Special Resolution upon the company desiring to make any alteration in the directorate as regards its composition, the qualification of its members, or their rotation.

² Unless the occasional appointment is so conditioned by the Articles, a Stock Exchange quotation may not be granted. See London Stock Exchange Rules printed in the Appendix.

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Table A—85.

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director, who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

110. No member not being a retiring director shall, unless recommended by the directors for election, be eligible for election as a director at any general meeting, unless such member or some other member intending to propose him, has left at least [] clear days before the meeting, at the office a notice in writing, under his hand, signifying his candidature for office, or the intention of such member to propose him [and the secretary has given intimation thereof in the notice calling the meeting,] [but if the members present at such meeting unanimously consent, the provisions of this Article as to such notice may be waived by the chairman, and his name shall thereupon be submitted to the meeting; and such notice, prior to any vote being taken thereanent, may be withdrawn at any time by the member giving the same].

111. The company may, by extraordinary [*or* ordinary] resolution, remove any director, and by ordinary resolution appoint another qualified person in his room [to hold office during such time only as the director in whose place he is appointed would have held but for his removal.]¹

Table A—86.

86. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

PROCEEDINGS OF DIRECTORS.

112. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and may determine the quorum necessary for the

¹ It is important that this effective power should be in the original Articles so that upon any critical juncture arising it can be acted upon without any necessity for alteration of the Articles as a condition precedent to the exercise of the power. It is unusual to provide for removal by special resolution on account of the delay involved by the necessity in that case for two meetings.

transaction of business; and until otherwise determined, two directors [if there be so many] shall be a quorum.¹

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113. A director may, and the secretary shall, upon the request of a director, at any time convene a meeting of the directors [but no director shall be entitled to notice of such meeting in the event of his being at the time out of the United Kingdom].

114. Questions arising at any meeting shall be decided by a majority of votes; and, in case of an equality of votes, the chairman shall have a second or casting vote.

87. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. Table A—87.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three. Table A—88.

115. Meetings of directors may be held in [] or elsewhere, as may from time to time be determined by them.²

116. The continuing directors may act notwithstanding any vacancy in their body, but so that, if the number falls below the minimum above fixed, the directors shall not, except for the purpose of filling vacancies, or of convening a general meeting of the company, act so long as the number is below the minimum.³

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose. Table A—89.

¹ A quorum of one may be fixed or the directors may delegate their powers as under Article 91 of Table A to a committee of one. See *Fireproof Doors*, 1916, 2 Ch. 142, and *Company Law and Practice*, p. 466. Where Table A is not adopted, the same holds good of Articles based on Table A. See Article 119, p. 126.

² This Article is one that may be safely dispensed with.

³ See *Company Law and Practice*, p. 465.

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117. The directors may elect a chairman of their meetings and determine the period for which he is to hold office ; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose one of their number to be chairman of such meeting.¹

Table A—90.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office ; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

118. A meeting of the directors for the time being, at which a quorum is present, shall be competent to exercise all or any of the authorities, powers, and discretions, by or under these Articles, for the time being vested in or exercisable by the directors generally.²

119. The directors may delegate any of their powers [other than the power of borrowing money or making calls] to committees, consisting of such member or members of their body as they think fit, and any committee so formed shall, in the exercise of the powers so delegated, conform to any rules that may from time to time be imposed on them by the directors.³

Table A—91.

91. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit ; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors.

120. The meetings and proceedings of any such committee, consisting of two or more members, shall be governed by the provisions of these Articles for regulating the meetings and proceedings of the directors, so far as the same are applicable thereto, and are not superseded by any rules made by the directors under Article 119.

¹ Article 94, if retained as in this Form, will necessitate the appropriate adjustment of this Article.

² The subject matter of this Article is obviously implied and it seems unnecessary to have a special Article to make the implication express.

³ See Article 112, p. 124, and note thereon.

92. A committee may elect a chairman of their meetings: if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting. **Form No. 2.**
Public
Company. **Table A—92.**

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote. **Table A—93.**

121. A resolution in writing, signed by all the directors, shall be as effective as a resolution passed at a meeting of directors duly convened and held.¹

or

[121. A resolution passed, or a deed or document executed, without an actual meeting of the board, shall be as valid and effectual as if it had been passed or executed at a meeting of the board, duly convened, provided always that the same is approved of in a minute signed by all the directors within the United Kingdom for the time being.]² **Variation.**

122. All [resolutions signed by the directors and all] acts done at any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such directors, or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed, and was qualified to be a director.³

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any **Table A—94.**

¹ Such an Article enables meetings of the directors to be dispensed with; but, where a Stock Exchange quotation is desired, it should be omitted. The alternative form covers the execution of deeds without a board meeting subject to a signed minute being obtained.

² This variation is not recommended. Although it concerns a matter of internal regulation, the Article is apt to cause anxiety to third parties as to its observance in any dealings with them.

³ See notes to section 74 of the Act in *Company Law and Practice*, p. 137, and *Channel Collieries Trust*, 1914, 2 Ch. 506.

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such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

MANAGING DIRECTORS.¹

123. The directors may from time to time appoint one or more of their number to be managing director or managing directors of the company, either for a fixed term, or without any limitation as to the period for which he or they is or are to hold such office, and may from time to time dismiss or remove him or them from office, and appoint another or others in his or their place or places.

124. A managing director shall, subject to the provisions of any contract between him and the company, be subject to the same provisions, as to vacation of his office [resignation and removal] as the other directors of the company; and if he cease to hold the office of director from any cause, he shall *ipso facto* [and immediately] cease to be a managing director; but while he continues to hold that office he shall not be subject to retirement by rotation and the rotation of the other directors shall be determined without regard to him.²

125. The remuneration of a managing director shall, subject to the terms of any agreement in that behalf, from time to time be fixed by the directors [*or* by the company in general meeting]

¹ The recent cases of *James Nelson & Sons*, 1914, 2 K.B. 770, and *W. Foster & Son*, 1916, 1 Ch. 532, are instructive upon the position of a managing director. If he is appointed for a fixed term, his appointment cannot be revoked without subjecting the company to liability for damages. But if no term is fixed, then the directors, or at least the company in general meeting, can terminate the appointment of the managing director. He cannot qualify the right, in the absence of any special agreement, to hold the office of managing director, so long as he is a director.

² The Editor refers to Form No. 10, p. 383, for the adoption by a public company of an agreement of which one of the terms is that the managing director is deemed to have had delegated to him all the powers and authorities competent to be delegated to him by the directors under the company's Articles, and that, so long as he continues duly to discharge his obligations as managing director under the Articles, he shall be exempt from any control or interference in the discharge of the duties of his office as managing director save in so far as permitted by the original Articles. Such a case, however, is very special,

and may be by way of salary or commission, or participation in profits, or by any or all of these modes, and that in addition to the directors' ordinary fees.¹

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

126. The directors may from time to time entrust to, and confer upon a managing director, for the time being, such of the powers exercisable under these Articles by the directors as they may think fit, [except the powers to borrow money and to make calls,] and they may confer such powers for such time, and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions as they think expedient; and that either in conjunction with, to the exclusion of, or in substitution for, all or any of the powers of the directors in that behalf; and they may, from time to time, revoke, withdraw, alter, or vary all or any of such powers.

or

[126. The said _____ shall be the first managing director of the company and shall act in that capacity until _____, 1920, without any remuneration other than any special remuneration to which he may become entitled to under Article [125] and in the case of his death, or in the event of his becoming incapacitated or ceasing to hold the office of managing director for any other reason, the directors may, from time to time, appoint one of their number to be managing director of the company either for a fixed term or without any limitation as to the period for which he is to hold such office, and in the case of the said _____ or in the case of any other managing director if so prescribed in the minute appointing him, such managing director shall be removable only by a resolution of the company in general meeting.] Variation.

¹ See note to Article 96, p. 106.

Form No. 2.

Public
Company.[MANAGEMENT.¹

[1. The management of the business of the company shall be entrusted to [] ship brokers, Greenock], and they are hereby appointed managers of the company, and, notwithstanding any change in the constitution of the firm, such firm shall hold office as such managers, and shall carry on the business of the company, with full power to appoint and employ under them brokers and agents at home and abroad.

[2. The managers shall pay out of the funds of the company, all expenses incurred in connection with the purchase of the ship referred to in Article [] in supervision of the completion thereof, and in forming and registering the company, and may exercise all such powers of the company as are not by the Act or by these Articles required to be exercised by the company in general meeting, subject, nevertheless, to the special provisions of these Articles, to the provisions of the Act, and to such directions (being not inconsistent therewith) as may be prescribed by the company in general meeting; but no direction made by the company in general meeting shall invalidate any prior act of the managers, otherwise valid in the absence of any such direction.

[3. The managers, notwithstanding their interest direct or indirect, shall adopt for the company their contract with shipbuilders, , dated , 1919, for the building and purchase of the steamship, to be known as the “ , ” with any modifications thereof, and with power to vary the terms thereof, and to complete and sign any contract thereanent on such terms and conditions as they see fit; and subject to the terms of such contract or contracts, shall pay the price of said vessel to the said shipbuilders.

[4. The managers shall not sell the said vessel without obtaining the consent either of a general meeting, or the consent, in writing, of members holding a majority of the [share] capital.

¹It is not indispensable that a company should be managed by directors, managing or otherwise. Shipping companies are frequently administered by managers, and in many cases these managers are companies with limited liability. Such managers incur the responsibilities of directors. Where they acquire the controlling interest in the shares of the company they manage, the position is apt to be prejudicial to the other shareholders. The variations show the forms adopted in such cases.

[5. The managers¹ [and their respective successors, heirs, Form No. 2.
executors, and representatives] shall be indemnified and kept Public
free out of the funds of the company from and against all Company.
charges, costs, losses, damages, and expenses which the managers
[or any of them] shall or may incur or sustain in
or about the execution of their duties as such managers, or
in or about the making of any contracts or agreements *bona*
fide made by them for or on behalf of the company, or in
furtherance, or supposed furtherance, of the object of these
Articles, except such charges or expenses as shall be incurred
or sustained by or through their [or his own] dishonesty;
and as the managers may from time to time take general
contracts for the carriage of goods by steamers, the managers
are empowered to fix the freight for the said vessel, or any
other vessel acquired by the company, when loaded under such
contracts, notwithstanding any interest, direct or indirect, the
managers [or any of their partners] may have in such contracts;
and the managers [or any of their partners] may themselves lend
money to or finance the company, receiving reasonable remunera-
tion or interest therefor, in addition to their salary and other
charges; and otherwise the managers [or any of their partners]
may contract with the company notwithstanding that they have
a personal interest, direct or indirect, in the contract, and they
shall retain such interest or any profit in or arising out of such
contract; and the managers [or any of their partners] shall not
be answerable for any banker, broker, or other person, with whom
any moneys or effects belonging to the company shall or may be
lodged or deposited for safe custody, sale, investment, or other-
wise, nor for the insufficiency of any investment of moneys
belonging to the company, nor for any other misfortune, loss, or
damage which may happen in the execution of their respective
offices or trusts, or in any relation thereto, unless the same shall
happen by or through their [or his own] dishonesty.

¹ If a limited company is appointed manager, the words in brackets would fall to be deleted, and other adjustments in that case would also fall to be made. It is usual in the case of partnerships to add an Article providing that:—"Notwithstanding anything in these Articles to the contrary the said _____ and each partner thereof, shall be at liberty to carry on the business of ship and insurance brokers or any other business, either in [Greenock] or elsewhere, and whether the same be identical in whole or in part with the business of the company, and to act as managers for other companies."

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Company.

[6. The managers shall be entitled to debit the company with their actual disbursements properly made on behalf of the company.¹

[7. The managers shall be paid a salary at the rate of [] per annum for the management of the company as from the date of delivery of the said vessel from the said shipbuilders, and the managers shall be entitled to debit and charge the same in the said vessel's accounts as in full of all charges for office rent, taxes, rates and salaries of indoor clerks and management, but exclusive of the salary or other remuneration of any practical superintendent engineer for the said vessel, or of brokers or other agents employed by them, or clearance fees or travelling or other legitimate expenses or charges for special work in connection with the business of the company, and in addition to the said salary, the managers shall be entitled to receive as further remuneration a commission of [10] per cent. upon the net profits (after deducting expenses and estimated insurance) of each voyage of the said vessel or any other vessel acquired by the company, and in the event of any dispute under this Article as to net profits on any voyage, such dispute shall be referred to the final decision of the auditor of the company, [and further, the managers shall be also entitled to a commission of [10] per cent. on any profits arising from a sale of the said vessel or of any other vessel acquired by the company.]²

[8. The managers at their discretion shall keep the said vessel and any other vessel acquired by the company, covered by insurance as they consider advisable, or as may be resolved upon in general meeting, and they may insure or leave uninsured freight and passage money as they deem right.]

[LOCAL MANAGEMENT.³

[1. The directors may provide for the local management of the company's affairs in any colony or dependency, or foreign

¹ This Article seems superfluous.

² See Article 96, p. 106, and relative note.

³ Companies with interests abroad frequently take power to appoint local managers. This power may be taken by a simple Article in comprehensive terms, or it may be expressed in several elaborate Articles. The variations give examples of both methods. Of course, power may be expressly taken to appoint local managers in the United Kingdom, but it is not imperative and very unusual to do so.

country, in such manner as they shall think fit, either by establishing local boards or local agencies, or appointing managers or attorneys, or by committing such management to any other company, firm, or person residing or carrying on business in the locality where the company's affairs are to be carried on; and any local boards, local agencies, managers, attorneys, company, firm, or person to whom such management shall be entrusted are hereinafter referred to as the "local managers."

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or

[1. The directors may from time to time provide for the management and transaction of the affairs of the company in any specified locality [in the United Kingdom or] abroad, in such manner as they think fit, and the provisions contained in the next three following Articles shall be without prejudice to the general powers conferred by this Article. Variation.

[2. The directors, from time to time and at any time, may establish any local board or agency for managing any of the affairs of the company in any such specified locality; appoint any persons to be members of such local board or managers or agents; fix their remuneration; delegate to any person so appointed any of the powers, authorities and discretions for the time being vested in the directors [other than their power to make calls or borrow or raise money]; authorise the members for the time being of any such local board or any of them to fill up any vacancies therein and to act notwithstanding vacancies; such appointment or delegation being made on such terms and subject to such conditions as the directors may think fit; and the directors may at any time remove any person so appointed and may revoke or vary any such delegation.

[3. The directors may at any time and from time to time by power of attorney under the seal of the company appoint any person or persons to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these Articles) and for such period and subject to such conditions as the directors may from time to time think fit; and any such appointment may (if the directors think fit) be made in favour of the members, or any of the members, of any local board established as aforesaid, or in favour of any company or of the members, directors, managers, or nominees of any company or firm, or otherwise in favour of any fluctuating body

Form No. 2. of persons, whether nominated directly or indirectly by the directors; and any such power of attorney may contain such powers for the protection or convenience of persons dealing with such attorneys as the directors may think fit.

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Company.

[4. Any such delegates or attorneys as aforesaid may be authorised by the directors to sub-delegate all or any of the powers, authorities, and discretions for the time being vested in them.

[5. The firm of _____, as such firm has been constituted since the _____ day of _____, 1919 [or is presently constituted, or as same may hereafter from time to time be constituted, and the partners thereof from time to time shall,] for [five] years from the _____ day of _____, 1919, and thereafter from year to year till removed from office as aftermentioned, be the managing agents of the company outwith the United Kingdom, and that on the following conditions and terms, viz.:—(*Firstly*) they shall not be removable except by resolution of the company in general meeting and, till the expiry of the said period of [five] years, and only in the event of their incompetency or wilful default; (*secondly*) they shall perform such duties and shall be entitled to exercise such powers as it may from time to time be arranged between the directors of the company and the managing agents shall be performed and exercised by them; but the managing agents in the performance of their duties and the exercise of the powers conferred upon them, shall be subject to the directions, and control of the company and of its directors; (*thirdly*) the appointment of managing agents hereby made shall not cancel or affect the appointments of the existing sub-agents of the company, nevertheless the managing agents shall be entitled, but only with the approval of the directors of the company, to terminate existing sub-agencies or to continue existing sub-agencies or to create additional sub-agencies and to appoint new or additional sub-agents under them all on terms to be approved by the directors; (*fourthly*) the managing agents shall be relieved by the company of all office rents, taxes, salaries, remuneration of sub-agents and other outlays and charges which may be payable in connection with the business of the company; and (*fifthly*) as from the _____ day of _____, 1919, there shall, each year during the continuance of their agency, be payable to the managing agents in respect of their services as such (a) a fixed

salary at the rate of _____ sterling per annum **Form No. 2.**
 and (b) a commission at the rate of [two and one-half] per centum **Public**
 on the amount, as certified by the auditor of the company for **Company.**
 the time being (whose decision shall be final), of the profits
 earned by the company as ascertained (for the purpose of
 determining the amount of said commission) after debiting only
 all sums and charges (other than depreciation and interest on
 money borrowed, whether on bonds, debentures, debenture stock,
 or otherwise) which such auditor may in his absolute discre-
 tion consider should be debited in ascertaining the profit
 earned by the company, and on such other conditions and
 terms, subject to the same not being inconsistent with those
 hereinbefore contained, as may be specified in any agreement
 between the company and the managing agents and formul-
 ating the terms of their appointment, or in any agreements in
 continuance or variation thereof which may from time to time
 be entered into between the company and the managing agents;
 declaring that, subject as foresaid, the terms of any such agree-
 ment may be adjusted and settled and from time to time, if
 thought fit, varied by the directors in their absolute discretion and
 any partner or partners of the said firm of _____
 may act as and be a director or directors of the company, under
 the declaration that the position of a partner of that firm is
 hereby declared not to be an office or place of profit under the
 company the acceptance or holding of which shall vacate the
 office of director under Article _____.]¹

[6. The local managers shall be bound to conform to all
 orders and directions made or given to them by the directors and
 shall be bound to keep proper minutes or records of all their
 transactions in connection with the affairs of the company and to
 transmit duplicates or copies of such minutes or records to the
 directors at least once in every calendar month.]²

¹ The appointment of foreign or colonial agents is a matter of very
 great importance and requires anxious consideration. Article 5 here
 is based upon the arrangements of a company with large dealings
 abroad. It is conceivable that it is undesirable to make such appoint-
 ments too advantageous to the agents either in the matter of their
 duration or in the scale of commission. The company in the normal
 case should reserve full freedom to terminate all such appointments.

² If Article 6 is adopted and there is a special Article as No. 5
 in this Form making any particular appointment, then part of No. 5
 ("secondly") would require to be modified so as to avoid the dupli-
 cation of provision on the same subject matter.

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Company.[COLONIAL REGISTER.¹

[1. The company may exercise the powers conferred by section 79 of the Act, and such powers shall accordingly be vested in the directors, and the company may cause to be kept in any colony (within the meaning assigned thereto by section 34 of the Act) in which it transacts business a branch register of members resident in such colony; and the directors may from time to time make such provisions as they may think fit respecting the keeping of any such branch register.

[2. The directors may empower the local managers in any colony where such a branch register is established, to consider and approve or reject transfers, and to order the registration of approved transfers of shares included in or proposed to be included in such branch register, and entrust such local managers with the same powers of refusing to register transfers of such shares as the directors have under these Articles.]

BORROWING POWERS.²

127. The directors may from time to time, at their discretion, borrow or raise [or secure] or take up, any sum or sums of money for the purposes of the company, at such rate of interest and upon such terms and with such provisions in favour of the lender as they may approve, provided that the moneys so

¹ Cognate to the provision for local managers is the keeping in many instances of a Colonial Register and the use of an official seal. A company can only have a Colonial Register in colonies within the acceptance of the Act. It may have an official seal in any foreign country, *i.e.*, territory "not situate in the United Kingdom." See *Company Law and Practice*, pp. 78 and 142.

² Public companies cannot borrow prior to their obtaining a certificate to commence business. They may offer for public subscription shares and debentures concurrently in terms of the proviso in sub-section (4) of section 87 of the Act. Where directors undertake pecuniary obligations by way of guarantee or otherwise, they may obtain covering securities from the company, and sometimes a special Article is inserted for this purpose. Among the powers specifically conferred on directors it is usual to include the power of giving such security. But special power is unnecessary. A general indemnity Article is usually inserted at the end of the Articles. For Stock Exchange purposes, the Articles must place a limit on the power to borrow. See London Stock Exchange Rules printed in the Appendix. It is usual to include a power to borrow in the Memorandum, notwithstanding that trading companies have this power by implication from their nature. Where this Article is inserted, sub-clause (17) of Article 99 should be deleted or at least modified.

borrowed or raised [or secured] or taken up and owing at any one time shall not, without the sanction of a general meeting of the company, exceed [half] the nominal amount of the capital [subject to the proviso that no lender or other person transacting with the company shall have any duty to inquire or see whether such limit is observed].

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or

[127. The directors may, from time to time, at their discretion, borrow upon bonds, debentures or debenture stock or otherwise for the purposes of the company any sum or sums of money not exceeding in the aggregate [*state proportion*] of the amount of the capital for the time being subscribed, and the directors may borrow in addition thereto, but for temporary purposes only, and that by way of discount, cash credit, or overdraft, or upon bill, promissory note, or in any other way, such sum or sums of money, not exceeding in all the sum of [£50,000], as may from time to time be necessary or desirable for conducting and financing the ordinary business transactions of the company.]

Variation.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

Table A—73.

128. The directors may raise or secure the repayment of such moneys, in such manner and upon such terms and conditions in all respects as they deem expedient, and in particular by the issue of debentures or debenture stock of the company secured over or charged upon all or any part of the property of the company, including its uncalled capital for the time being.

or

[128. The directors may raise or secure the repayment of such moneys in such manner and upon such terms and conditions in all respects as they think fit, and in particular by the creation and issue of debenture stock, or the issue of debentures or other obligations of the company; and in security of money so borrowed or raised may burden, mortgage, pledge, or charge all or any part of the property, assets, and rights of the company, including the uncalled capital, and may make and carry into effect any arrangements which they consider expedient for securing the repayment of any money so borrowed or raised, and may convey any land or property of the company to trustees

Variation.

Form No. 2. or otherwise, and may grant and execute all necessary deeds and writings for securing and completing such loans; and in particular (but without prejudice to the foregoing general powers) the directors may create and issue mortgage debenture stock to the amount of £ , with interest at the rate of £ per cent. per annum, to be secured as a first charge upon the estates of , to be acquired by the company in absolute property, and to be issued upon such terms and conditions in all respects as the directors shall determine].

or

Variation.

[128. As security for any money so borrowed or raised, the directors may mortgage or pledge all or any part of the company's property, including its uncalled capital, by execution of a bond and disposition in security, [mortgage,] trust deed, or conveyance, or other security to trustees or others, and they may appoint trustees for the purposes thereof, and fix the remuneration (if any) to be given and paid to such trustees; and they may grant or issue any bonds, debentures, debenture stock, bills, notes, or other instruments as security therefor; and any such bonds, debentures, or debenture stock may be made redeemable by drawings or otherwise, or may be made irredeemable.]¹

129. Every debenture or other deed or certificate issued by the company for securing the payment of money may be so framed that the moneys thereby secured shall be assignable [so that the assignee shall not be liable for any obligation of the assignor to the company arising otherwise than out of the said debenture or other deed or certificate] [*or* free from any equities between the company and the person to whom the same may be issued.²]

¹ A mortgage is not a form of security known to Scots law. There is little trace in the draughtmanship of company legislation of any special consideration for either Scottish conveyancing or its general jurisprudence. It has to be kept in view that section 100 of the Act imposes the obligation on every limited company to keep a "register of mortgages" for the entry therein of all "mortgages and charges." The phrase "other security" is sufficient to cover the granting of a mortgage in any event. Neither "mortgage" nor "charge" is defined in the Act. See *Company Law and Practice*, p. 196.

² "Free from equities" is a term of English law referring to undisclosed preferable interests created by the debtor. It is desirable to omit in Scottish Articles expressions requiring resort to English law for their construction.

130. Any bonds, mortgages, debentures, debenture stock, or other securities may be issued at a discount, premium, or otherwise, and with any special privileges as to redemption, surrender, drawings, share allotments, appointment of directors, or otherwise.

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131. The company may, upon the issue of any bonds, [mortgages], debentures, debenture stock, or other securities, confer on the creditors of the company holding the same, or on any trustees or other persons acting on their behalf, an interest in the management of the company, by giving them the right of attending and voting at general meetings, or empowering them to appoint one or more of the directors of the company, or otherwise as may be agreed.

132. If any uncalled capital of the company is assigned [or charged] by any bond, [mortgage], or other security, the directors may delegate to the person in whose favour such bond, [mortgage], or other security is executed, or to any other person in trust for him the power to make calls on the members in respect of such uncalled capital, and to sue in the name of the company or otherwise for the recovery of moneys becoming due in respect of calls so made and to give valid receipts for such moneys, and the power so delegated shall subsist during the continuance of the bond, [mortgage], or other security, notwithstanding any change of directors, and such power shall pass to the assignees of such bond, [mortgage], or other security without any necessity for the express assignation thereof.

133. A certificate by two directors that the amount of any loan is within the limit of the borrowing powers under these Articles shall be conclusive evidence in any question between the lenders and the company.¹

134. The directors shall cause a proper register of mortgages to be kept of all mortgages and charges or other securities specifically affecting the property of the company [and also a register to be kept of the holders of debentures of the company:] and the same shall be open to the inspection of the registered holders thereof and of any member of the company, but in his

¹ If there be no limit, such an Article may be omitted, but it has to be kept in view that a limit is required by the rules of the Stock Exchange.

Form No. 2. case subject to such conditions as the directors may impose [and with power to the directors to close such register of debentures for any period or periods not exceeding in all [thirty] days in each year.]¹

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Table A—74.

74. The directors shall duly comply with the provisions of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company, or created by it, and to keeping a register of the directors, and to sending to the Registrar of Companies an annual list of members, and a summary of particulars relating thereto, and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions, and a copy of the register of directors and notifications of any changes therein.

DIVIDENDS [AND RESERVE].²

135. The company, in general meeting, may declare a dividend to be paid to the members according to their rights and interests in the profits [and fix the time for the payment of such dividend and determine that such dividend shall be paid to the holders registered as such, at the close of a specified day, of the shares in respect of which such dividend is declared.]

Table A—95.

95. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

136. The directors may from time to time [after providing for all preferable payments out of profits] pay to the members on account of the next forthcoming dividend such interim dividends as, in their judgment, the position of the company justifies [and such interim dividend may, if the directors think fit, be paid on

¹ See Article 100 for which some company draughtsmen have a preference and which, if used, supersedes the Article here given. A "charge" is an English form of security, although the form of a "charging order" has in certain circumstances been introduced into Scots law. It seems preferable that Scottish practitioners should exclude references to deeds or terms peculiar to English law or conveyancing. This Article, for all practical purposes, can be omitted.

² Articles dealing with reserve funds are frequently grouped under the heading of "Reserve Funds" or the like. See Article 148, p. 146.

the ordinary shares, notwithstanding that only a partial or interim dividend may have been paid on any preference shares.]¹

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96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company. **Table A—96.**

137. No larger dividend shall be declared than is recommended by the directors, [but the company in general meeting may declare a smaller dividend.]²

138. No dividend shall be payable except out of the profits arising from the business [or operations] of the company [of whatever nature, directly or indirectly].³

97. No dividend shall be paid otherwise than out of profits. **Table A—97.**

139. Subject to the rights of members entitled to shares issued upon special conditions, the profits applicable for dividends of the company shall be divisible among the members in proportion to the amount paid up [or credited as paid up] from time to time on the shares held by them respectively, but where money is paid up in advance of calls under the provisions hereof, upon the footing that the same shall carry interest, such money shall not, whilst carrying interest, confer a right to participate in profits [and no sum of money in the nature of a premium paid upon the issue of any shares shall confer any such right.]⁴

¹ Article 96 of Table A is a statutory recognition of the right to declare interim dividends. See *Company Law and Practice*, p. 470, and *Palmer's Company Precedents, I.*, p. 767. As to deduction of income tax on preferential dividends of fixed amount, see *Ashton Gas*, 1904, 2 Ch. 621.

² The part in brackets being implied need not be added.

³ As to applying accumulated profits in reduction of paid-up capital, see section 40 of the Act. The paid up capital of the company may not be intact and losses may have been incurred in trading, but neither of these circumstances disentitles a company from declaring dividends out of the available profits of any particular year. *Ammonia Soda v. Chamberlain*, 1918, 1 Ch. 266. No reference is made in this Article to reserve funds as available for dividend. In so far as representing profits of the company the Article in terms covers such reserve funds.

⁴ This Article is sometimes made the introductory Article of this group in Articles of Scottish companies. Upon its subject matter, see *Company Law and Practice*, p. 475. As to "paid up," see Article 3, i.e., Interpretation Article.

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Table A—98.

98. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this Article as paid on the share.

140. The declaration of the directors, [confirmed by the auditor], as to the amount of the net profits of the company available for dividend, shall be conclusive.

141. The directors may deduct from the dividends payable to any member all such sums of money as may be due and payable by him to the company on account of calls, instalments, or otherwise.

or

Variation.

[141. The directors may retain any dividends, and apply the same in or towards payment or satisfaction of the debts, liabilities, or obligations of the member entitled to such dividends.]

or

Variation.

[141. The directors may retain the dividends payable upon shares in respect of which any person is, under Article []¹ entitled to become a member, or which any person, under that Article, is entitled to transfer, until such person shall become a member in respect of such shares, or shall duly transfer the same.]

142. A transfer of shares shall not pass the right to any dividend declared thereon before registration of the transfer.²

143. In case several persons are registered as the joint holders of any share, any one of such persons may give effectual receipts

¹See Article 49. It may be thought that Article 39 covers the rights of the company under Article 141 in any of its forms. The provision for retention of dividends, &c., may be objectionable to the Stock Exchange Committees. See London Stock Exchange Rules printed in the Appendix.

²See *Company Law and Practice*, p. 466. The terms of sale as between buyer and seller may include the dividend. It is questionable whether much is gained by the insertion of such an Article.

for all dividends and payments on account of dividends [or bonuses]¹ in respect of such share. **Form No. 2.**

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100. If several persons are registered as joint holders of any share any one of them may give effectual receipts for any dividend payable on the share. **Table A—100.**

144. Notice of the declaration of any dividend, whether interim or otherwise, shall be given to the registered holders of shares in manner hereinafter provided.

101. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein. **Table A—101.**

145. All dividends [or bonuses] unclaimed for one year, after having been declared, may be invested, or otherwise made use of, by the directors for the benefit of the company until claimed [and if not claimed within [five] years of their declaration shall [or may] be forfeited by resolution of the directors for the benefit of the company.]²

146. The company shall not be responsible for the loss in transmission of any cheque or warrant sent through the post to the registered address, or to the banker of any member, whether at his request or otherwise.³

or

[146. Any dividend, unless otherwise directed, may be paid by cheque or other warrant made payable to the order of the person to whom it is sent, and sent through the post to the registered address of the member or person entitled thereto [or in the case of joint holders to the member first named on the register in respect of their joint holding, and unless written instructions to the contrary have been received by the company, the company shall not be responsible for any loss thereof in transmission.] **Variation.**

¹ See Article 3, i.e., Interpretation Article, as to "dividend." The subject-matter of this Article may be made part of a clause grouping the rights and obligations of joint holders.

² Forfeiture of unclaimed dividends should not be provided for where Stock Exchange quotation may be desired. See London Stock Exchange Rules printed in the Appendix. Such provisions are construed *strictissimi juris*. *Dublin North City Milling*, 1919, 1 I.R. 5.

³ See *Company Law and Practice*, p. 667.

Form No. 2. 147. No dividend shall bear interest against the company.

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Company.

102. No dividend shall bear interest against the company.

Table A—102.

[Miscellaneous Dividend Articles.]

Variation.

[1. The net profits of the company shall be applied as follows:— in payment (first) to the holders of preference shares of a [cumulative] preferential dividend at the rate of [£6] sterling per centum per annum on the amount paid up on such shares (second) to the holders of ordinary shares of a dividend at the rate of [£10] sterling per centum per annum on the amount paid up on such shares and (third) to all the members of the company according to the amount paid up on their respective shares of the balance (if any) by way of additional dividend.]¹

Variation.

[2. Capital account and revenue account shall, for the purpose of ascertaining profits available for dividend, be treated as separate accounts, and loss on capital account need not be made good before declaring a dividend.]

Variation.

[3. At any general meeting declaring a dividend on the ordinary shares, whether out of the general reserve fund or out of other undivided profits of the company, the company may direct satisfaction of such dividend, wholly or in part, by the distribution of specific assets and in particular of paid-up shares, debentures, or debenture stock of the company or of paid-up shares, debentures, or debenture stock of any other company, or in one or more of such ways, and in that event, the directors shall give effect to such direction; and where any difficulty arises in regard to any such distribution, the directors may settle the same as they may think expedient, and in particular, they may issue fractional certificates, fix the value for distribution of such specific assets or any part thereof, determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, sell or cause to be sold on behalf of those entitled thereto any fractional parts of any specific assets to be distributed in satisfaction of dividend, pay or cause to be paid to those in right thereof their respective proportions of the net proceeds of such sale, and vest any such fractional parts of such

¹ See note to Article 136 of this Form.

specific assets (including in particular as aforesaid) in trustees upon any trusts for the persons entitled to the dividend or any fractional parts thereof, all as may seem expedient to the directors, and if necessary, a proper contract, constituting the title of the allottees, shall be entered into and filed in accordance with section 88 of the Act as regards shares of the company, and the directors may appoint some person to enter into such contract [as trustee for and] on behalf of the persons entitled to such dividend] [and such appointment shall be effectual.]¹

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[4. Where any business is bought by the company as from a past date [before or after its incorporation] upon the terms that the company shall, as from that date, take the profits of the business and either pay no consideration therefor, or pay and give therefor interest on the purchase money, or on any part thereof, or other consideration, any such profits for which no consideration is paid, or any excess of such profits over such interest or other consideration, where interest or other consideration is given therefor, shall be credited to revenue account, and if such profits shall be insufficient to pay the interest or make up the other consideration, the deficiency shall be debited to revenue account, and the excess or deficiency, as the case may be, shall, for the purpose of ascertaining the fund available for dividend, be treated as a profit or loss arising from the business or operations of the company, provided always that the appropriation to dividend of such profits or excess of profits, as the case may be, is conditional upon the [share] capital of the company remaining intact after such appropriation is made.]²

Variation.

[5. The costs attending the formation of the company, the completion of the title of the company to the property assets and rights

Variation.

¹ This Article relates to the payment or discharge of dividends duly declared by the issue of fully paid shares or other distribution *in specie*, and is to be contrasted with Articles providing for capitalisation of profits without any declaration of dividend. See forms of such Articles and notes thereon. Instead of resorting to the execution of a contract of the nature here indicated, it is considered as sufficient to use the form supplied by the Registrar under sub-section 2 of section 88 of the Act, stating the consideration simply as "capitalisation of reserves" and to file it along with a certified copy of the minute of the directors of the company by which the shares are allotted and issued.

² This is an Article that may frequently be found useful. If not in the original Articles, it can always be introduced upon necessity arising by a special resolution. The bracketed words ought to be omitted. See *Company Law and Practice*, p. 458.

Form No. 2. acquired by it, or in connection with the purchase of any business or contract, or the establishing of any new branch of business, or the acquisition by purchase of any property of a leasehold [or wasting] nature, or any extraordinary expenditure, may be spread over a series of years, or otherwise treated as the [board] may determine, due provision, in their opinion, being always made for writing down the same] [and the amount of such expenditure for the time being outstanding may, for the purpose of calculating the profits of the company for dividends, be reckoned as an asset.]¹

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Company.

RESERVE FUND.²

148. Such portion of the profits or revenue of the company, as the directors shall think fit, may be set apart as a reserve fund, to be applied at the discretion of the directors to any purpose to which such fund may be properly applied and in particular and without prejudice to such generality to:—

- (1) Equalisation of dividends [or payment of bonuses].³
- (2) Repair and maintainance of the property of the company and allowance for depreciation, meeting any contingencies, or urgent payments, or any temporary or periodically recurring, or unforeseen, or casual expenses, necessities, or liabilities, or requirements of the company, its business or property, or the gradual liquidation of the debts of the company.
- (3) Due maintenance of any sinking fund to be established for meeting the repayment of debentures or debenture stock issued by the company, or recouping capital previously expended, or as floating capital for carrying on the business of the company, or distribution amongst the holders of ordinary shares in proportion to the total amounts paid up upon their holdings of shares.

¹ See *Company Law and Practice*, p. 476. Cf. also Article 150, p. 154. The treatment of outstanding expenditure as assets in the calculation of dividend is of doubtful validity.

² It is convenient to make a group heading for Articles dealing with reserves. "Profits or revenue" may not be synonymous. See Article 138, p. 141.

³ See Interpretation Article, No. 3. Bonuses are, of course, nothing but large or increased dividends,

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

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Table A—99.

or

[148. Before the declaration of a dividend the directors may set aside any part of the net profits of the company to create a reserve fund, and may apply the same either by employing it in the business of the company or by investing it in such manner (not being a purchase of or loan upon the shares of the company) as they shall think fit, and the income arising from such reserve fund shall be treated as part of the gross profits of the company, and such reserve fund may be applied for the purpose of maintaining the property of the company, [renewing wasting assets,] meeting contingencies, forming an insurance fund, or equalising dividends, or for any other purpose for which the net profits of the company may lawfully be used; and until the same shall be so applied it shall be deemed to remain undivided profit, and the directors may also carry forward to the accounts of the succeeding year or years any profit or balance of profit which they shall not think fit either to divide or to place to reserve.]

Variation.

[Miscellaneous Reserve Fund Articles.]

1. The company by ordinary resolution in general meeting may convert from time to time any undivided profits at the credit of any reserve fund or account, and available for dividend on the ordinary shares of the company into [share] capital by appropriating the same among the holders of ordinary shares in proportion to the amounts paid up thereon and held by them respectively in or towards payment of the sums unpaid for the time being in respect of any shares in the share capital of the company allotted and issued to such shareholders.¹

or

¹The validity of the distribution in the form of shares of surplus profits without going through the formality of declaring a dividend cannot be accepted as beyond doubt. The decision of the Judicial Committee in *Swan Brewery v. Rex*, 1914 (P.C.), A.C. 231, seems to

Form No. 2. support it. The *modus operandi* in that case for the purposes of a Western Australian statute was treated as equivalent to the declaration of a dividend and attracted "dividend duty" thereunder. Substance and not form was regarded. Nevertheless, it is difficult to see how a debt for which the shareholders could sue the company was there created and which the company could satisfy by an issue of shares as fully paid. The report of the case does not recite the capitalising resolutions at length, and the printed constitution of the company examined by the Editor does not disclose any Articles dealing with the capitalisation of reserve funds.

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The capitalisation of reserve funds accumulated out of profits has been complicated, as the result of the War, with questions of liability to the Crown on the part of shareholders for income tax and super-tax. It is obvious if such reserve funds are distributed as dividend, the Crown may claim income tax and super-tax from shareholders by putting such dividends into computation for the purpose of ascertaining the appropriate rate of income and super tax assessment. The desire is therefore to so capitalise profits that the liability to these taxes may not be incurred. It is, of course, lawful to "evade" or avoid liability by legitimate means. See *Bullivant*, 1901 (P.C.), A.C. 196; *Richmond and Gordon*, 1909, A.C. 466. No cash in such distributions, according to many recent examples in practice, is now usually paid or payable. The shareholders only receive share certificates of certain face values.

Not a few companies have capitalised their profits before division and appropriated the capitalised sum to the shareholders before the issue of the bonus shares with the indirect object of enabling shareholders to escape from liability to super-tax. Surplus capital assets may be divided by a going company under a scheme of arrangement with the sanction of the Court in pursuance of section 120 of the Act or under a formal and voluntary liquidation resolved upon for the purposes of such a division and "stayed" by the Court after the division is effected so that the company resumes its business as if it had never resolved upon liquidation. Either of these methods obviates all objections to the competency of the distribution of surplus capital assets by a going company. No company can apply its funds in the purchase of its own shares. The axiom, however, as to the inability of a company to do so should be restricted in its application to the capital funds of the company as distinct from its funds created out of profits. The declaration of a dividend clearly creates a debt by the company to its members, and such a debt can be properly satisfied by an allocation of shares. It is doubtful whether surplus profits from sale of capital assets can be converted by a company into fully paid shares in the hands of its shareholders even where the Articles so provide, without any actual declaration of a cash dividend. The competency of shareholders resolving upon the application of such funds, derived from profits, in payment of shares to be issued to them for an equivalent amount, is in serious doubt. The company must have in any event existing assets capable of being distributed in cash or in *specie*. See *Foster v. New Trinidad*, 1901, 1 Ch. 208. Share capital cannot, of course, be distributed unless under a scheme for its reduction with the sanction of the Court or through the medium of a liquidation. In the opinion of the Editor, it does seem essential to make bonus shares legally fully paid up beyond doubt that the distribution of dividends must be in cash or carry the right to cash. It may be sufficient that the members under the Articles bind themselves, subject to

the appropriate resolution, to take fully paid shares in satisfaction of their right to a dividend. Such a transaction may operate, however, in the same way as if a dividend had been declared and be tantamount in substance to the declaration of a dividend. See *Swan Brewery, supra*. The shareholders under such a method do not receive in cash any dividend, and they are entitled to receive nothing but fully paid shares. Eminent English counsel support the legality of the issue of fully paid shares in such circumstances. *Rowlatt, J., in Commissioners of Inland Revenue v. Blott and v. Greenwood, 1920, I.K.B. 114*, has decided that such share distributions do not enter into computation for super-tax purposes, but his decision is under appeal. The Editor is of opinion, that the schemes for capitalisation of reserves of trading profits, where no dividend is declared, are in contravention of the principles governing companies under the Act. The safe course to follow is that of reconstruction, whereby the whole assets of the liquidating company, whether derived from capital or revenue, are acquired by the acquiring or new company for shares in it distributable among the members of the old or liquidating company. This course also solves all tax difficulties. In many cases, the expense of reconstruction is more than compensated by its manifest advantages. Directors or their representatives may have to meet claims of personal liability in the event of liquidation. On the other hand, the legal difficulties presented by the capitalisation schemes under consideration may be ignored by practical business men in accepting the risks attached to them as very remote. Highly successful companies discount the factor of liquidation.

Various companies have gone a step further and have made issues of shares upon balances showing surplus profits arrived at by appreciating the value of their capital assets. But it is extremely doubtful whether it is legitimate to deal in this way with any fund not in the nature of marketable securities as profits available for dividend. The profits are not actually in existence, but are potential and estimated only. In particular, the appreciation of goodwill is liable to abuse in this connection. The case of *Ammonia Soda v. Chamberlain, 1918, 1 Ch. 266*, is appealed to as authorising such distributions. It does not in terms decide that the unrealised appreciation of capital can be applied in paying for new shares under the authority of Articles empowering dividends to be paid in shares. Shares issued as fully paid under such a scheme may be found in the event of liquidation to be subject to payment of their par value.

It is always in the power of companies to go back upon their accounts with a view to the adjustment of capital and income, and companies have recently resorted to such readjustment with a view to enlarging their income reserves against share distributions. Capital assets may have been written down out of profits, and in the end such writing down may have been unnecessary. Such depreciation debits may be written back and carried to a reserve fund or to a profit and loss account. See *Mills v. Northern Railway of Buenos Ayres, 1870, 5 Ch. Ap. 621*; *Bishop v. Smyrna and Cassaba Railway (No. 2), 1895, 2 Ch. 596*.

The various forms of capitalisation Articles have been selected from actual instances adopted by companies, but they should be considered by the draughtsman along with these notes.

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Variation.

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[1. The company in general meeting or the Board with or without the sanction of a general meeting may at the time when the [share] capital is being increased, or at any time when there is unissued capital available, resolve that the whole or part of the shares so being created or remaining unissued shall be issued to the holders of the ordinary shares on the footing that the same shall be issued and accepted as and declared to be, fully paid shares, and the company in general meeting, or in the absence of any instructions from the company in general meeting, the Board may decide the manner in which by appropriation from any reserve fund or balance at the credit of profit and loss or other available source, the amount shall be transferred to [share] capital account against the issue of such shares as fully paid shares.]¹

or

Variation.

[1. The sum standing at the credit of the reserve fund or any portion thereof [or any surplus capital funds] may from time to time be distributed among the shareholders by way of bonus in proportion to the number of shares held by them, and either in cash or in the form of ordinary or preference shares fully or partly paid up, and carrying dividend from such dates or in such other manner as may be decided by the directors, with power to the directors to adjust and settle the rights of any member to a fractional part of a share as they may think proper, and the directors may, when requisite, file a proper contract or contracts in accordance with section 88 of the Act, and appoint any person to sign such contract or contracts on behalf of the persons entitled to the bonuses, and such appointment shall be effective.]¹

or

Variation.

[1. The company in general meeting may resolve from time to time by ordinary resolution to capitalise the whole or any part of the undivided profits of the company standing for the time being at the credit of any reserve fund or account of the company, and the amount so capitalised shall be set free for distribution and be appropriated to and amongst the holders of the ordinary shares of the company as directed by the said resolution, and the Board shall apply the same as directed by the said resolution or in paying up shares when there are unissued shares available, debentures or debenture stock, or other

¹ The reference to, "any surplus capital funds" may enable the capitalisation of sums placed to reserve through the sale at a profit of capital assets, but care must be taken to see that no reduction of share capital is involved. The directors need not convene the company.

obligations of the company, to be appropriated by and distributed amongst the holders of the ordinary shares of the company rateably according to the number of shares held by them respectively, and for that purpose the company may resolve to authorise the Board (a) to declare a special dividend or bonus out of such reserve fund or account free of income tax and payable in respect thereof to the members registered at the date of passing any such resolution as holders of the existing shares for the time being, in proportion to the number of such shares held by them respectively at such date, and that upon the condition and with the direction, if the company so resolve, that the special dividend or bonus so declared shall be retained and applied in payment or satisfaction of all shares to be issued to them credited as fully paid against such special dividend or bonus; (b) to distribute such undivided profits by way of special dividend or bonus as so declared among such members accordingly, wholly or partly in cash or, if the company so resolve, to allot and issue shares of the company credited as fully paid in payment or satisfaction of such special dividend or bonus, and to issue and allot the said shares accordingly; (c) to allot and issue shares of the company credited as fully paid against the amount so capitalised among the shareholders in proportion to the shares held by them respectively; (d) to settle all difficulties arising in regard to any distribution, allotment and issue of such paid-up shares on account of fractions or otherwise, by issuing to the members entitled thereto or selling for their behoof fractional certificates, or by creating a trust at the expense of the company by the appointment of a member or members of the company [as trustee or trustees] for behoof of the members entitled to fractions of shares, to receive the allotment and issue thereof on their behalf, with power to sell the same and account to such members for the proceeds of sale or by such other means as the Board may adopt for the settlement of all such difficulties; and (e) to enter into any contract or agreement with any member of the company whom they may appoint for that purpose for behoof of all the members entitled to participate in such special dividend or bonus or appropriation and relative distribution, allotment and issue of shares, for the purpose, if necessary, of constituting the title of the allottees thereof and filing the same in pursuance of section 88 of the Companies (Consolidation) Act, 1908, with such provisions therein as the Board may deem expedient for the dis-

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Form No. 2. posal of fractions of shares, and any contract or agreement made under such authority shall be valid and effectual; and subject to the provisos that the Board may determine and fix the date from which all such fully paid shares so distributed, allotted and issued shall rank for dividend.¹

Variation.

[2. In the event of the capitalisation of the reserve fund or any part thereof by the creation of shares to the amount thereof, and of the proposed distribution of such shares amongst members by way of dividend, such shares shall be distributed *pro rata* amongst the holders of ordinary shares to the exclusion of the holders of preference shares, provided, however, that no [share] capital so to be created shall rank prior to or *pari passu* with the preference shares at the time existing, and such shares when converted shall be converted into ordinary stock only, ranking in all respects *pari passu* with the then existing ordinary stock of the company.]

Variation.

[3. Before fixing the balance of profit and loss for each year, the directors shall make such provision as they shall deem sufficient for depreciation or wastage in value of buildings, works, machinery, plant, and other property of the company; and the directors may from time to time write off such sum as they see fit in reduction of the value (if any) of the goodwill of the business of the company.]

Variation.

[4. All moneys carried to the reserve fund, and all other moneys of the company not immediately applicable or required for any payment to be made by the company may be either employed in the business of the company, or be invested by the directors upon such securities (other than the purchase of or loan upon shares of the company) as the directors may from time to time think proper [free from the statutory restrictions imposed upon the investment of trust funds],² with power to them from time to time to deal with and vary such investments, and also to divide such fund into special funds as they may think fit, and to dispose of all or any part of the said fund or funds for the benefit of the company [and any income arising from the funds invested under the provisions hereof shall be included in the annual profits of

¹ See notes to Article 1, p. 147, of this series of Optional or Variation Articles, and also note to Article 3, p. 145.

² It is thought that directors are not fettered by the provisions of the Trusts Acts in regard to the investment of the company's funds under such an Article, but the Article is sometimes worded as indicated with the view of removing doubt.

the company, unless the directors determine that the same shall be accumulated and added to the reserve fund].

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Variation.

[5. The premium on all shares issued at a premium shall be carried to the reserve fund provided in Article 148.]

[SECRECY.

[1. Members by themselves or in general or other meeting of the company shall not be entitled to require discovery of, or any information respecting, any details of the trading of the company, or any matter which may be, or be in the nature of, a trade secret or mystery of trade, or which may relate to the conduct of the business of the company, and which in the opinion of the directors it will not be expedient in the interest of the members to communicate to the public; and no member shall have the right, without the express sanction in that behalf of the directors, to be in or upon any part of the working premises of the company, or to see any of the working books or documents of the company, or to interfere in any respect with the details of the management and conduct of the business of the company.¹]

Optional.

ACCOUNTS.

149. The directors shall cause a true account to be kept of all sums of money received or expended by the company, and of the matters in respect of which such receipt or expenditure takes place, and of the credits [*or assets*] and liabilities of the company, and of all other matters necessary for showing the true state and condition of the company; and the accounts shall be kept in such books and in such manner, and such books of accounts shall be kept at the office or at such other place or places [of security] as the directors think fit.

103. The directors shall cause true accounts to be kept—

Table A—103.

Of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place, and

Of the assets and liabilities of the company.

104. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

Table A—104.

¹This Article can only be enforced subject to the rights of members as to accounts of the business of the company under the Companies (Consolidation) Act, 1908, or under the Articles otherwise. See *Company Law and Practice*, p. 212. It is appropriate in the case of companies with secret manufacturing processes, but in general it is not a common Article.

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150. All costs, charges, or expenses incurred or sustained in or about the establishment of the company which the directors may consider preliminary may be placed to a separate account, to be called "Preliminary Expenses Account," and shall be charged against the capital or profits of the company, and in such way or manner as the directors may think fit.¹

151. The directors shall from time to time determine [by resolution] whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company, or any of them, shall be open to the inspection of the members [and debenture holders of the company], and no member [or debenture holder] shall have any right of inspecting any account or book or document of the company except as conferred by the Act or authorised by the directors or by a resolution of the company in general meeting.²

Table A—105.

105. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

152. At every ordinary general meeting in every year the directors shall lay before the meeting [a profit and loss account or] a statement of the accounts and balance sheet of the company [or a profit and loss account and a balance sheet containing a summary of the property and liabilities of the company] made up, in the case of the first statement, from the incorporation of the company, and thereafter to a date not more than months before the meeting, from the time when the last preceding statement was made, and every such statement [or account and balance sheet] shall be accompanied by a report by the directors as to the state and condition of the company, and as to the amount (if any) which they recommend to be paid out of the profits by way of dividend to the shareholders, and of the

¹ See Miscellaneous Dividend Articles No. 5, p. 145, after Article 147.

² Such Articles do not debar the Court from granting diligence in proper cases for discovery as to the state of the accounts, &c. See *British and South American Steam Navigation*, 1912, W.N. 110.

amount (if any) which they propose to carry to the reserve fund [and such statement [*or* account and balance sheet] and report shall be signed by two directors and countersigned by the secretary].¹

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106. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting. Table A—106.

107. A balance sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund. Table A—107.

153. A printed copy of every such account, balance sheet and report [with the report of the auditor or a reference thereto] shall, seven days previously to the meeting, be sent to each of the registered holders of shares in the manner in which notices are hereinafter directed to be served [*or* sent] [and at the same time two copies of such documents shall be forwarded to the Secretary of the Share and Loan Department of the Stock Exchange, London, and to the Secretary of the Stock Exchange, Glasgow, in the event of the shares of the company being quoted in the official lists thereof]; [and copies of the said balance sheet and report of the auditor shall be furnished to any member [*or* debenture holder] at a charge not exceeding sixpence for every hundred words].²

108. A copy of the balance sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder. Table A—108.

¹ See *Company Law and Practice*, p. 482, and also section 113 (3) of the Act.

² See section 113 of the Act. It imposes no obligation to send out copies of the balance sheet prior to the meeting. Article 108 of Table A does so. It will be observed that while Article 107 of Table A provides for the submission of a profit and loss account at the annual meeting, that account in detail does not necessarily require to be shown as part of the balance sheet. For Stock Exchange purposes, an Article in this form is necessary. See London Stock Exchange Rules printed in the Appendix.

Form No. 2.**AUDIT.**Public
Company.

154. Once at least in every year the accounts of the company shall be examined, and the correctness of the balance sheet ascertained by one or more auditor or auditors.

or

Variation.

[154. Auditors shall be appointed and their duties regulated in accordance with the provisions of sections 112 and 113 of the Act.]¹

Table A—109.

109. Auditors shall be appointed and their duties regulated in accordance with sections 112 and 113 of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force.

155. The first auditors shall be [*insert names, or*] appointed by the directors, and shall hold office until the second ordinary general meeting (being the first ordinary meeting after the statutory meeting), unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at such meeting may appoint auditors, and subsequent auditors shall be appointed by the company at each ordinary general meeting, and shall hold office until the next ordinary general meeting [and the provisions of sections 112 and 113 of the Act, as to audit shall have effect, except that the notice required by sub-section (4) of section 112 of the Act to be given by advertisement by the company to the shareholders shall be given in manner hereinafter provided].²

156. If an appointment of auditors is not made at an annual general meeting the Board of Trade may, on the application of any member of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.³

¹ If the alternative form is adopted, then resort must be had to the sections of the Act for further guidance. But it is the preferable course to set out a code for the auditors based on these sections, and this method is in general observance. As to the duties and responsibilities of auditors, see *Company Law and Practice*, p. 207, *et seq.*

² Advertisement is optional, but is not common. If Article 161 is adopted, then the bracketed portion may be omitted.

³ This Article should be left out. It is not appropriate that the Articles should provide for such a failure of duty. This Article is simply an echo of the statutory right of a member under section 112 (2) of the Act.

157. The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.¹

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158. If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.²

159. The auditors may be shareholders of the company, but no director or other officer of the company shall be eligible for appointment as auditor during his continuance in office.³

160. Retiring auditors shall be eligible for re-election.⁴

161. A person other than a retiring auditor shall not be capable of being appointed auditor at an annual general meeting, unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders in the manner prescribed by the Articles not less than seven days before the annual general meeting; provided that if, after a notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this Article, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this Article, be sent or given at the same time as the notice of the annual general meeting.⁵

162. The remuneration of the first auditors and of any auditor appointed to fill any vacancy shall be fixed by the

¹ This Article simply repeats the statutory powers of the directors and of the surviving or continuing auditors under section 112 (6) of the Act, and can be omitted.

² This result is implied without any necessity for its express provision.

³ This gives effect to the statutory prohibition against the appointment of directors or officers of the company as auditors.

⁴ Express provision is not required.

⁵ This Article is a repetition substantially in terms of section 112 (4) of the Act. It may be desirable to incorporate its provisions for the guidance of members, and it is commonly done. Cf. Article 155.

Form No. 2. directors; the remuneration of subsequent auditors shall be fixed, and may, from time to time, be varied by the company in general meeting.¹

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Company.

163. The auditors of the company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanations as may be necessary for the performance of the duties of auditors; and the auditors shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting, stating whether or not they have obtained all the information and explanations they have required, and whether, in their opinion, the balance sheet referred to in their report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company; and such report (which shall be attached to the balance sheet or referred to by a note at the foot thereof) shall be read before the company in general meeting, and shall be open to inspection by any shareholder.²

164. Every balance sheet of the directors when audited and approved by a general meeting shall be conclusive except as regards any error discovered therein within [three] months next after the approval thereof, and upon any such error being discovered within that period the account shall forthwith be corrected and thenceforth shall be conclusive.

NOTICES.

165. All notices and other documents requiring to be served by the company upon the members may be served either personally or by leaving the same for, or sending them through the post in a [prepaid] letter [envelope or wrapper] addressed to them at their respective registered addresses in the United

¹ See section 112 (7) of the Act, and see note to Article 96, p. 106.

² This Article incorporates sub-sections (1) and (2) and part of (3) of section 113 of the Act. Where such an Article is inserted, it is prudent to follow the section in terms as its directions are imperative. See Article 152, p. 154.

Kingdom; [and every notice sent through the post shall be deemed to have been served at the time when the letter containing the same is put into the post office]; provided that a notice of any meeting convened to confirm a resolution previously passed as a special resolution may be given by advertisement.¹

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110. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

TableA—110.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

166. No member whose registered address is outwith the United Kingdom shall be entitled to have service of any notice upon him at such address; but any such member may register any place in the United Kingdom at which he desires such notice to be given, and the same shall be deemed his registered place of address and notice to him thereof shall be given accordingly; and notices to members without any registered place of address in the United Kingdom shall be deemed to be well served upon them at the expiration of twenty-four hours after the same [or so soon as the same] are posted up in the office.²

¹ The proviso as to advertisement may be useful in some cases and is permitted by sub-section (6) of section 69 of the Act, which provides that notice of a meeting for the purposes of that section shall be deemed to be duly given when given in manner provided by the Articles. The Article under consideration may be framed on the footing that "Notice of any meeting of the company, whether for ordinary or special business, may be given either by notice thereof inserted in [*The Edinburgh Gazette* or *The Scotsman*] newspaper or by circular served upon the members through the post office in a prepaid cover addressed to them at their address in the Register [but provided that the postal method shall be only adopted at any time at which the dividend on the preference shares is one year in arrear or more]." As to proof of service, see Article 167 and note thereto. If Article 165 be retained in its present form, Article 167 can be restricted to the certificate of service. See note to Article 68.

² It is preferable to dispense with any interval of twenty-four hours or otherwise.

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Table A—111.

111. If a member has no registered address in the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him on the day on which the advertisement appears.

167. Any notice, if served by post, shall be deemed to have been served twenty-four hours after the letter containing the same shall have been posted; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post-office or into any post-box subject to the control of the Postmaster-General.¹

or

Variation.

[167. A certificate under the hand of the secretary or other officer or servant of the company that any notice required to be given to members or any of them has been duly served, and specifying the date thereof shall be sufficient [*or* conclusive] evidence of such service.]²

168. In the case of joint holders of shares, notice may be given to the first named of such holders in the register of members in respect of such shares.³

or

Variation.

[168. All notices shall, with respect to any shares to which persons are jointly entitled, be given to whichever of such persons is named first in the register and notice so given shall be sufficient notice to all the holders of such shares.]

¹ Articles 167 to 173 here given are optional; and in the case of Article 173 the Interpretation Article may supersede it. Where there are Share Warrants, the special group of Articles dealing with them should contain an Article dealing with Notices. See these Articles, p. 64. The Citation Amendment (Scotland) Act, 1882, appears to be the basis for the provision in Article 167 that service shall operate as from the expiry of twenty-four hours after posting. But such a provision seems to complicate the fact of notice unnecessarily. If this Article is retained, the part of Article 165 dealing with the same matter will fall to be deleted. The variation form can, however, stand with Article 165 in its present form.

² This alternative form seems preferable, as it dispenses with the consideration of any fixed period, *e.g.*, twenty-four hours after service in the calculation of due service, or the ordinary course of postal delivery.

³ Occasionally the various provisions in regard to dividends, notices, &c., in the case of joint holders are grouped under the heading "joint holders."

112. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share. **Form No. 2.**
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169. Every person who, by operation of law, transfer, transmission, or other means, shall become entitled to any share, shall be bound by every notice or other document which, previous to his name and address being entered on the register in respect of the share, is given to the person from whom he derives his title. **Table A—112.**

or

[169. When any notice is served in accordance with these Articles at or to the registered place of abode of a member then, notwithstanding he be then deceased, and whether or not the company have notice of his decease, such service thereof shall, for all the purposes of these Articles be deemed service thereof on each and all of his heirs and representatives [in respect of all shares registered in his name jointly or solely with others until some person be registered in his stead in respect thereof.] **Variation.**

or

[169. No notice of general meetings need be given to any person entitled to a share in consequence of the death or bankruptcy of a member unless such person shall have been duly registered as a member of the company.] **Variation.**

113. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, in the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred. **Table A—113**

114. Notice of every general meeting shall be given in some manner hereinbefore authorised to (a) every member of the company (including bearers of share warrants) except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings. **Table A—114.**

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Company.

170. Any notice required to be given by the company to the members or any of them and not expressly provided for by these Articles shall be sufficiently given if given by advertisement and any notice required to be, or which may be, given by advertisement shall be advertised once in [two] daily newspapers [published in _____].

*or***Variation.**

[170. All notices given by advertisement shall be advertised in the _____ newspapers and shall be deemed to have been given on the day when such advertisement shall have appeared; or if it shall not have appeared in both papers on the same day then on the last of the days on which it shall have so appeared.]

171. All notices to be given on the part of the members shall be left at, or sent through the post to, the office of the company [or to any officer of the company at such office on its behalf].

172. The signature to any notice to be given by the company may be written, lithographed or printed.

173. The expression "clear days" throughout these Articles shall mean the days intervening between and exclusive of the day upon which any notice shall have been deemed to have been served, or any act done, and the day to which such notice shall apply or upon which the next consequence of such act shall take effect.

*or***Variation.**

[173. Where a given number of days' notice, or notice extending over any other period, is required to be given, the day of service shall, unless it is otherwise provided, be counted in such number of days or other period.]¹

MINUTES.

174. The directors shall cause minutes to be duly entered in books provided for the purpose—

- (a) Of all appointments of officers.
- (b) Of the names of the directors present at each meeting of the directors, and of any committee of directors.
- (c) Of all orders made by directors and committees of directors.

¹ See notes to Article 167 and Interpretation Article No. 3.

- (d) Of all resolutions and proceedings of general meetings of the company, and of meetings of the directors and committees.¹

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Public
Company.

175. Every director present at any meeting of directors or committees of directors shall sign his name in a book to be kept for that purpose; and any such minutes of any meeting of the directors, or of any committee, or of the company, if purporting to be signed by the chairman of such meeting, or by the chairman of the next succeeding meeting, shall be receivable as *prima facie* evidence of the matters stated in such minutes.²

75. The directors shall cause minutes to be made in books provided for the purpose— Table A—75.

(a) Of all appointments of officers made by the directors:

(b) Of the names of the directors present at each meeting of the directors and of any committee of the directors:

(c) Of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

[MISCELLANEOUS EVIDENCE ARTICLES.³

[1. For the purposes of any action brought by the company against any member for recovery of any call, instalment, or other debt due by him as member, it shall be conclusive to prove that his name is on the register as the holder of the number of shares in respect of which such call, instalment or sum became due, that in the case of a call or instalment the resolution of the directors making the same is duly entered in the minute book of the company and that notice of such call or instalment was duly given to him in pursuance of these Articles; and it shall not be necessary to prove the appointment of the directors who made such call or instalment, that a quorum

Optional.

¹ See section 71 of the Act.

² See section 71 of the Act and *Company Law and Practice*, p. 132. Articles 174 and 175 are not infrequently omitted; and their subject matter is left to the statutory direction as to the keeping of minutes and to practice as regards directors signing attendance registers.

³ In view of Article 174 and section 71 of the Act, it is a matter of choice whether any of these Miscellaneous Articles should be inserted.

Form No. 2. of directors was present at the meeting at which such call or instalment was made, or that the meeting at which such call or instalment was made was duly convened or held, or any other matter whatever.¹

[2. Every entry in the minute book of the proceedings of general meetings purporting to be entered and signed according to the Act or these Articles, shall, in the absence of proof to the contrary, be deemed to be correct, and an authentic proceeding of the company accordingly; and, in every case, the burden of proof of error shall be wholly on the person making any objection to such entry.

[3. An extract from the minutes of the company, or of the directors, or of any committee, certified under the hand of the secretary to be a true copy, shall be received as evidence of any matter or subject which it embraces, and the party to whom the same has been furnished shall not be entitled to demand the production of the minute book from which the extract has been made, or to have any access to the minute book, except in the company's registered office, and only if he has been authorised by the directors.]

TRUSTEES.

176. The company may appoint any two or more persons to be trustees for the company for any purpose for which it is deemed advisable to have the intervention of trustees, and in particular the whole or any part of the property of the company may be vested in trustees, either for the benefit of its members, or for the security of its creditors in the payment of any moneys, or the discharge of any obligation which the company ought to pay or fulfil, and the company may at any time fill up any vacancy in the office of trustee [and by extraordinary resolution remove any trustee.]²

¹ Article 20 in regard to calls seems sufficient. This Article based to some extent on section 28 of the Companies Clauses Consolidation (Scotland) Act, 1845, may, however, be preferred. All the Articles, including that regulating the minutes, which instruct evidential purposes are frequently grouped under the title of "Evidence." See, *e.g.*, variation Article 42, p. 76.

² Where there is no express provision for removal of a trustee, *e.g.*, for debenture holders, resort to the court may be necessary, and unless in a clear case of misconduct or in cases falling under section 8 of The Trusts (Scotland) Amendment Act, 1891, it may not intervene.

177. The company may delegate to any members or creditors or other persons the power of appointing or removing trustees, and may by contract in writing surrender or restrict its powers of appointing or removing trustees.

Form No. 2.

Public
Company.

178. The remuneration of the trustees shall be such as the company [*or* directors] shall determine, and shall be paid by the company as part of its ordinary working expenses.¹

INDEMNITY.

179. Every director, manager, trustee, auditor, secretary, and other officer or servant of the company shall be indemnified by the company against, and it shall be the duty of the directors out of the funds of the company to pay, all costs, losses, and expenses which any such officer, or servant, may incur or become liable for by reason of any contract entered into, or act or deed done by him as such officer, or servant, in any way, in the discharge of his duties, including all travelling expenses.²

180. No director or other officer of the company shall be liable for the acts, receipts, neglects, or defaults of any other director or officer, or [for any loss or damage arising out of any error of judgment or oversight on his part] or for joining in any receipt or other necessary act [*or* for conformity], or for any loss or expense happening to the company through the insufficiency or deficiency of title to any property acquired by order of the directors for or on behalf of the company, or for the insufficiency or deficiency of any security in, or upon which any of the moneys of the company shall be invested, or for any loss or damage arising from the bankruptcy, insolvency, or wrongful act of any person with whom any moneys, securities, or effects

¹ It is not expedient to have this group of Articles unless in the case of large companies.

² Where the Articles as to remuneration of directors do not include hotel and travelling expenses in reference to board meetings, this Article, it is thought, does not justify a claim for their recovery any more than it would justify the secretary claiming his travelling expenses going to and returning from the office of the company without any express bargain therefor in addition to his salary. See *Marmor*, 1908, S.C. 78, and *Company Law and Practice*, p 455. Apart from such an Article, the company must indemnify directors and other officers or servants against all obligations arising out of their proper actings as agents of the company. See *Famatina Development*, 1914, 2 Ch. 271.

Form No. 2. shall be deposited, or for any other loss, damage, or misfortune
 Public whatever, which shall happen in the execution of the duties
 Company. of his respective office or in relation thereto, unless the same
 happen through his own dishonesty.¹

ARBITRATION.²

181. If and whenever any difference shall arise between the company and any member or his representatives touching the construction of these Articles, or touching any act, matter, or thing relating to the rights and liabilities existing between the parties by reason of these Articles [or of the Act,] such difference shall be forthwith referred to [an arbiter or to] two arbiters to be mutually chosen or to an umpire to be chosen by the arbiters before entering on the consideration of the matters submitted to them, and every such reference shall be conducted in accordance with the provisions of the Arbitration (Scotland) Act, 1894.

or

Variation. [181. In the event of any disputes [between the company and the managers or any of their partners, or] between the company and any member of the company as to any of the affairs or dealings of the company, the same shall be settled by arbitration, each party appointing an arbiter, with power to such

¹ See *Company Law and Practice*, p. 461. "For conformity" is a phrase found commonly in English Articles.

² The Editor has seen this clause extended so as to cover disputes with creditors but such a provision is of very doubtful propriety and its legality is questionable. Section 119 of the Act contemplates the reference of future differences between the company and any person and such a power covers disputes with members. But it is suggested that it is ill advised to sweep strangers dealing with the company within the ambit of such a clause upon the ground that they are affected with notice of the Articles. The 119th section permits of procedure only in terms of the Railway Companies Arbitration Act, 1859, but it cannot be reasonably argued that all other methods of submission are impliedly excluded. The Act of 1859 is a dead letter so far as arbitration to which limited companies are parties is concerned. See *Company Law and Practice*, pp. 141 and 215. Effect has been given recently to an arbitration clause as between the company and its members. See *Kent or Romney Marsh Sheep-Breeders*, 1915, 1 Ch. 881. But disputes between bodies of directors trying to exclude each other have been held not within an arbitration clause. *Marks & Spencer*, 1916, 32 T.L.R. 237. The wisdom of inserting any arbitration clause at all is doubtful, and the practice cannot be said to be general. Section 192 of the Act provides for compulsory arbitration in regard to the interests of dissentient members upon transfer or sale of the property of a company in a voluntary liquidation

arbiters to appoint an oversman, and the decision of such arbiters or oversman shall be binding on all parties.]

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Public
Company.

WINDING UP.

182. In the event of the company being wound up [whether voluntarily or otherwise], the assets available for distribution among the members shall belong to and be divided among the members in proportion to the amounts paid up [or credited as paid up] on their shares respectively at the date of winding up; [and if such assets shall be insufficient to repay the whole of the paid-up capital, such assets shall be distributed so that, as nearly as may be, the losses shall be borne by the members in proportion to the capital paid up, or which ought to have been paid up, on the shares held by them respectively at the commencement of the winding up; but this Article shall be without prejudice to the rights of the holders of shares issued under special conditions, [and to preference shares having priority over the ordinary shares.]]¹

183. In any winding up the liquidators may, with the sanction of an extraordinary resolution, divide among the contributories in specie any part of the assets of the company, [and in particular any shares, debentures or debenture stock, or other securities held by the company in any other company], and may, with the like sanction, vest any part of the assets of the company in trustees upon such trusts for the benefit of the members as the liquidators with the like sanction shall think fit; [and, if thought expedient, any such division may be otherwise than in accordance with the legal rights of the contributories; and in particular any class of contributories may be given preferential or special rights or may be excluded altogether or in part; but, in case any division otherwise than in accordance

¹ See Interpretation Article No. 3 as to "paid up." See *Company Law and Practice*, p. 318, as to calls for equalisation purposes. Where there are different classes of shares, the rights of, e.g., preference shareholders in the final distribution as regards undeclared dividends prior to liquidation depend on the constituting documents of the company. See *New Chinese Antimony*, 1916, 2 Ch. 115; *Crichton's Oil*, 1902, 2 Ch. 86; and *Robertson, Sanderson*, 1917, 55 S.L.R. 88. If it is intended that preference shares after obtaining priority in the winding up for repayment of capital and arrears of dividend, whether formally declared or not, shall carry no further right to participate along with ordinary shares in any surplus assets, it is expedient to make express provision for this restriction. See *Fraser and Chalmers*, 1919, 2 Ch. 114.

Form No. 2. with the legal rights of the contributories shall be determined on, any contributory who would be prejudiced thereby shall have a right to dissent with all ancillary rights as if such determination were passed by special resolution pursuant to section 192 of the Act; and in case any shares forming part of the said assets and being divided as aforesaid involve any liability to calls or otherwise, any person entitled under such division to any such shares may, within ten days after the passing of the extraordinary resolution, by notice in writing, direct the liquidators to sell his proportion, and pay him the net proceeds; and the liquidators shall, if practicable, act accordingly.¹

Public
Company.

[Miscellaneous Winding Up Articles.]

Variation.

[1. If the company shall be wound up for the purpose of reorganisation, amalgamation, or simple dissolution, and there shall be any surplus assets after payment of all debts and satisfaction of all liabilities of the company, such surplus assets² shall be applied, *first*, in repaying to the holders of the preference shares, *pari passu*, the nominal amount of [share] capital held by them respectively, with all arrears or deficiency of dividend (if any) [whether declared or not] to the commencement of the winding up; *second*, in paying to the holders of the preference shares a premium [or bonus] equal to the average premium at which such shares may have stood in the Stock Exchange for the years (or such shorter period as the shares may have been quoted) immediately preceding such liquidation; *third*, in repaying to the holders of the ordinary shares of the company, *pari passu*, the paid up proportion of their [share] capital [*in the case of stock*, the nominal amount of the stock held by them]; and *fourth*, in dividing the residue among the holders of ordinary shares according to the amounts paid up [or credited as paid up] on such shares held by them respectively. [*Where there is also stock, add, pari passu with the nominal amount of ordinary stock held by holders thereof.*]]

¹ Section 186 (1) of the Act appears to contemplate that the Articles may provide as here for a distribution otherwise than in accordance with the legal rights of members, and the rights of dissentients under section 192 of the Act are safeguarded in the form. Such an Article may obviate the necessity for a scheme of arrangement under section 120 of the Act. See *Sandwell Park Colliery*, 1914, 1 Ch. 589.

² As to the meaning of "surplus assets," see *Company Law and Practice*, p. 318. See Interpretation Article 3 as to "paid up."

[2. In the event of a winding up of the company every member of the company who is not for the time being in Scotland shall be bound, within [fourteen] days after the passing of a resolution to wind up the company voluntarily or after the granting of an order for the winding up of the company, to serve notice in writing on the company appointing some person in Scotland upon whom all summonses, notices, intimations, deliverances, and decrees in relation to or under the winding up of the company may be served or made; and in default of such appointment the liquidator of the company shall be at liberty on behalf of such member to appoint some such person; and service upon any such appointee whether appointed by the member or the liquidator shall be deemed to be good personal service on such member for all purposes; and where the liquidator makes any such appointment he shall, with all convenient speed, give notice thereof to such member by advertisement in two newspapers published in [] or by a registered letter sent through the post and addressed to such member at his address as mentioned in the register of members of the company and such notice shall be deemed to be served on the day [following that] on which the advertisement appears or the letter is posted.]¹

Form No. 2.

Public
Company.

Variation.

NAMES, DESCRIPTIONS, AND ADDRESSES OF SUBSCRIBERS.

RICHARD W. HOLLAND, Printer, Upper Park Road, Paisley.
 T. C. SCOTT BIRKHEAD, Patent Agent, 156 Nile Street, Glasgow.
 HUBERT JOHNSTON, Advocate, 179 West Park, Aberdeen.
 ROB. BANNERMAN, Chartered Accountant, Lynwood, Dundee.
 JOSEPH PATERSON, Merchant, 182 West George Street, Glasgow.
 CHARLES HENDERSON, Law Clerk, 109 West George Street, Glasgow.
 JOHN HOTSON, Law Clerk, 109 West George Street, Glasgow.

Dated the day of , Nineteen hundred and nineteen.

Witness to the above signatures—

R. S. WILSON, *Law Clerk*,
 109 West George Street, Glasgow.

Note.—The statutory form of the Memorandum follows the English mode of placing the description or designation of a subscriber after his address, but the Scottish style as here given is frequently followed in Scotland. The signatories and witnesses to both the Memorandum and the Articles should be identical.

¹ This Article proceeds on an Article frequently found in the Articles of English companies with the view of meeting difficulties as to service upon members resident outwith the jurisdiction. But parties by becoming members of a company subject themselves to the Courts of its domicile irrespective of their own in all matters relating to their liability as contributories. See *Company Law and Practice*, p. 309. Cf., however, *Palmer's Company Precedents*, ii., p. 210, and *Stiebel's Company Law and Precedents*, p. 1027.

ARTICLES OF ASSOCIATION.

II.—PUBLIC COMPANY—LIMITED BY SHARES.

TABLE A ADOPTED WITH VARIATIONS.

Form No. 3.

GENERAL NOTES.

Table A.
Partial
adoption.

THE partial adoption of Table A is not so satisfactory as the adoption either (1) of Table A expressly or automatically by force of section 11 of the Act by the non-registration of any Articles; or (2) of an exclusive code specially framed. Partial adoption is nevertheless frequently favoured. It has the disadvantage, however, that unless Table A is printed as an appendix as is sometimes done for convenient reference, it necessitates inconvenient resort to Table A, as found in the Act or separately printed, in order to see the purpose both of the Articles of Table A that do apply and of the Articles thereof that are excluded. This disadvantage is so far removed, as is sometimes done, by printing, as already indicated, Table A in a schedule or appendix, and denoting by italics the Articles of Table A that are excluded.

Articles
excluded.

Of the Articles of Table A that are excluded, when the method of its partial adoption is followed, it is almost invariable to exclude Articles Nos. 35 to 40 inclusive, dealing with share warrants. It is the exception for Scottish companies to favour share warrants. Only companies with large share capital and foreign interests issue share warrants, and the few Scottish companies of this character have their specially framed Articles. At the same time, it must be remembered that these Articles, Nos. 35 to 40 of Table A, confer an optional power upon the company, and there is no real object gained by excluding them in the Articles of a public company. Articles Nos. 31 to 34 inclusive dealing with share conversion into stock are not so frequently excluded, although the position of most companies is much the same as that with regard to share warrants. The same general observations apply to them. From examination of a considerable number of Articles partially adopting Table A in connection with companies recently registered in Scotland, the Editor has observed the arbitrariness with which other Articles of Table A are excluded. Articles Nos. 68 to 70 inclusive, of Table A, are almost the only Articles which invariably and properly require modification for the purposes of particular companies.

Article No. 77, debarring directors from participating in the profits of contracts with their companies, is apparently always excluded. General Notes.
 Articles Nos. 2, 5, 9, 11, 12, 20, 28 to 30 inclusive, 41 to 51 inclusive, 53, 54, 56, 65, 72, 73, 76, 78 to 86 inclusive, 88, 96, 98, 99, 103, 108 and 110 to 114 inclusive, in addition to the Articles Nos. 31 to 34 inclusive, 35 to 40 inclusive, 68 to 70 inclusive, and 77 already noticed, are among the Articles usually selected for exclusion in respect of the substitution, generally, of cognate Articles with necessary variations adapted to particular companies. Unnecessary modifications of some Articles in Table A are frequently framed which it is thought might be left to obvious inference. In fact, the practice of almost eviscerating Table A by this process demonstrates the superiority of an independent code for each company where Table A *simpliciter* is not acceptable; and although it may be that in many respects such a code merely repeats provisions of Table A, its convenience in the administration of a company's affairs is clear. Articles of Association : Public Company.

Where a company intends to offer any part of its share capital for subscription, the simple adoption of Table A would place the company in immediate difficulties. By section 85 of the Act, a minimum subscription in such circumstances, if not mentioned in the Memorandum of Association—a competent but most inappropriate document for this purpose—then the whole share capital offered for subscription would require to be subscribed, and five per cent. at least of the nominal amount of the shares offered would require to be paid to and received by the company before the company could commence business. Even where the company made no public invitation for the subscription of its share capital, the same consequences would also practically follow by reason of the terms of sub-section (7) of the section in question. In other words, Articles 2 and 5 of Table A are mere notes of advice as to the duties of directors in these matters. They do not give the directions of section 85 operative effect. They should not, however, be excluded although, as already noticed, their exclusion is occasionally seen. Articles must be framed so as to give effect in such circumstances to their directions and the statutory provisions at the same time. Capital offered for subscription.

The practice of editing Table A by specifying the various modifications upon each of its Articles or group of Articles is not recommended. Table A. Modifications.
Directors and others have sufficient difficulties in interpreting the Articles of Table A by themselves.

The Articles of Table A will be found printed in small type as guides to the drafting of Articles as an independent code in Form No. 2, and the index to the Regulations of Table A in the Contents will show where the various Articles of Table A are found in dealing with that Form. Table A. Printed.

ARTICLES OF ASSOCIATION
OF
PUBLIC COMPANY LIMITED BY SHARES.
TABLE A ADOPTED WITH VARIATIONS.

Form No. 3.

THE COMPANIES ACTS, 1908 TO 1917.

[PUBLIC] COMPANY LIMITED BY SHARES.

ARTICLES OF ASSOCIATION
OF
THE COMPANY, LIMITED.

CONSTITUTION [*or* PRELIMINARY].¹

1. [Name of Limited Company] [*or* The Company] is established by its Memorandum of Association as a company limited by shares in accordance with and subject to the provisions of The Companies Acts, 1908 to 1917 [hereinafter referred to as "the Acts"], and subject to the Regulations contained in Table A in the First Schedule to The Companies (Consolidation) Act, 1908 [hereinafter referred to as "the Act"], with the exception of Articles [*here enumerate*], and to this and the following additional Articles as the Articles of Association of the Company.

¹ "Preliminary" is the heading to Article 1 of Table A and forms an Interpretation Article. It does not seem to be so appropriate a heading as "Constitution" or "Fundamental." It is unusual in this Form to have any detailed Interpretation Article.

BUSINESS.

Form No. 3.

Public
Company.

2. The business of the company shall be carried on by, or under the management of, the directors, subject only to such control of meetings as is provided for by these Articles, and the directors shall have regard to the restrictions imposed by section 87 of the [said] Act upon the commencement of its business.¹

3. The company shall forthwith adopt an Agreement made between _____ and _____ as trustee for and on behalf of the company, dated _____ 1919; and the directors shall carry the said Agreement into effect [or the directors shall forthwith carry into effect an Agreement made between _____ and the company, dated _____ 1919] with full power, nevertheless, from time to time, to agree to any modifications in the terms thereof, and the said agreement notwithstanding that its terms have been settled by the said _____ who is the promoter of and seller to the company under the said Agreement, and who has fixed the purchase consideration thereby expressed to be given by the company as the consideration he is willing to accept, and at which alone he is prepared to sell, shall be binding upon the company, and it shall not be subject to challenge or reduction upon the ground that there is not and was not an independent board of directors; or that no independent valuation of the property and assets acquired by the company under the said Agreement has been obtained for the Company; and the seller under the said Agreement shall not be liable to account to the company, or to any member of the company, for any profit by reason of any fiduciary relation to the company, or to any member of the company; and every member, present and future, joins the company on the basis of this Article [or every member, present and future, is deemed to have full notice of the contents of the said Agreement and to have agreed to all its provisions] [and further, any shares to be issued as fully paid under the said Agreement to any person subscribing the Memorandum of Association shall be held as discharging his obligation as such subscriber to take shares in terms of his subscription to the said Memorandum].²

¹ If the short method suggested in Article 1 is adopted, then "said" will be deleted.

² See note to this Article in Form No. 2, p. 53.

Form No. 3.

SHARE CAPITAL AND SHARES.

Public
Company.

4. [The share capital of the company is £ , divided into per cent. [cumulative] preference shares of £ each and ordinary shares of £ each.] [The holders of] or The preference shares shall be entitled to receive in each year a [cumulative] preferential dividend, payable half-yearly or yearly as the directors may decide, at the rate of per cent. per annum out of profits or reserve on the amount which may from time to time during the period for which the dividend is paid be paid up or credited as paid up on the shares held by them respectively [and as regards both capital and revenue shall be preferred [or preferential] to the ordinary shares.] (If in any year the profits are insufficient to pay the preferential dividend and there are no funds available otherwise for the payment of the full amount of the said preferential dividend for that year, the deficiency shall be made good as soon as may be out of the profits of the subsequent year or years, and before payment of any dividend on the ordinary shares; provided, nevertheless, that where money is paid up in advance of calls upon the footing that the same shall carry interest, such money shall not, whilst carrying interest, nor shall any premium or sum of money in the nature of a premium, paid upon the issue of any shares, confer a right to participate in profits.)¹ The said preference shares shall rank in priority to the ordinary shares as regards capital as well as [arrears of] dividend [whether declared or undeclared] prior to the commencement of the winding-up of the company, but they shall confer no further right of participation in the profits or assets].

5. The shares forming the original [share] capital of the company shall [subject to the terms of the said [minute of] agreement] be at the disposal of the directors [or board], and they

¹ The part in parenthesis dealing with the application of future profits in payment of past arrears of cumulative preferential dividends is exegetical and is really not required. Indeed, the whole paragraph in parenthesis may be omitted as unnecessary. As to this Article generally, see notes upon Article 9, p. 56, and Variation Article 9, Form No. 2, p. 57. The Editor has seen a provision in an Article based on this form to the effect that the Preference shares "shall be subject to a right of redemption on giving six months notice at any time after the expiry of five years upon payment of a premium of [ten] per cent. If the right of redemption is exercised it shall be exercised rateably." Such a provision seems contrary to law unless it is effected as a reduction of capital with the statutory safeguards.

may allot or otherwise dispose of them to such persons, at such times, and on such terms as they think proper.¹

Form No. 3.

Public
Company.

6. The company may at any time pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, at a rate not exceeding per cent. on the nominal amount of each share.²

7. The surplus profits in each year available for payment of dividend shall be applicable to the payment of dividends to the holders of the ordinary shares, in proportion to the amount for the time being paid up on the ordinary shares held by them respectively.³

8. If at any time the [share] capital, by reason of the issue of preference shares or otherwise, is divided into different classes of shares, all or any of the special rights and privileges attached to each class may be affected, altered, modified, or dealt with in any manner, with the sanction of an extraordinary resolution passed at a separate general meeting of the members of that class. To any such general meeting all the provisions of these Articles shall, *mutatis mutandis*, apply, but so that the necessary quorum shall be members of the class holding, or representing by proxy, a majority of the [share] capital paid, or credited as paid, on the issued shares of the class.⁴

¹ It is unnecessary to add as is sometimes done "and provided that no shares shall be issued at a discount." See notes upon Article 11, Form No. 2, p. 58.

² Section 89 of the Act has to be kept in view with regard to the disclosure of the amount or rate per cent. of the commission paid or agreed to be paid in the prospectus, or statement in lieu of prospectus or any circular or notice other than a prospectus inviting subscriptions. See cognate Article 12, Form No. 2, p. 59, and notes to Article 99 (3), Form No. 2, p. 110.

³ This Article, which is sometimes seen in Articles based on the present Form, is unnecessary looking to the unequivocal terms of Article 98 of Table A.

⁴ This Article substitutes a simple majority for the one-third of the issued shares as provided by Article 4 of Table A. See notes upon cognate Article 59, Form No. 2, page 87.

Form No. 3.

Public
Company.

9. If by the conditions of allotment of any share the whole or any part of the amount thereof shall be payable by instalments, every such instalment shall, when due, be paid to the company or as they may direct by the holder of the share.¹

10. The company in general meeting may from time to time increase its share capital by the creation of new shares of such amount as may be deemed expedient.²

11. The new shares shall be issued to such persons, upon such terms and conditions and with such rights and privileges annexed thereto as the general meeting resolving upon the creation thereof shall direct, and if no direction shall be given, as the directors shall determine, in terms of the succeeding Article; and in particular, such shares may be issued with a preferential or qualified right to dividends, and to ranking in the distribution of the assets of the company, and with a special or without any right of voting.³

12. Subject to any direction in the resolution authorising the issue, any new shares shall be offered in the first instance to all the holders of ordinary shares of the company, in proportion to the existing ordinary shares held by them respectively.³

13. Any capital raised by the creation of new shares shall subject as aforesaid, be considered part of the original [share] capital, and shall accordingly be subject to the provisions herein contained, with reference to the payment of all calls and instalments, transfer and transmission, forfeiture, lien, surrender, and otherwise.⁴

14. The company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and accordingly shall not be bound to recognise, even though the company, or any of its officers, have notice thereof, any equitable or other

¹ See Article 13, Form No. 2, p. 60.

² See Article 56, Form No. 2, p. 83.

³ See Article 57, Form No. 2, p. 84.

⁴ Articles 41 and 42 of Table A have to be kept in view. The proposed Articles, 10 to 13 inclusive, can be omitted, and their subject matter can be regulated agreeably to Article 42 of Table A by the terms of the extraordinary resolution required by Article 41 of Table A increasing the share capital.

claim to or interest in such share on the part of any other person, save as herein provided.¹

or

Form No. 3.
Public
Company.

[14. Every person who has accepted or who may accept any share or shares, and whose name is entered in the register, and no other person, shall be deemed to be a member; and the directors may decline to receive notice of any trust, express, implied, or constructive, or to permit it to be entered in the register or received by the company. Variation.

15. The directors may allot or issue fully or partly paid-up shares in the company as payment or part payment of any property, business, or rights acquired from, or for services rendered or to be rendered to the company by any person, including the directors, or for money.²

16. Shares may be issued or transferred to persons in the employment of the company, or persons acting as agents or representatives of the company, subject to such special conditions as to purchase, sale, or transfer thereof, or appropriation of dividend or bonuses applicable thereto, as may be determined by agreement in writing between the company and such persons, or as may be specified in any minute of the directors relative thereto.³

17. The expenses incurred in the formation and registration of the company shall be a first charge on the funds of the company.⁴

18. The certificates of title to shares shall be issued under the seal of the company, and signed by a director, and countersigned by the secretary or some other person appointed by the directors.⁵

¹ See notes on cognate Article 14, Form No. 2, p. 60.

² See Article 99 (13), Form No. 2, p. 112.

³ This Article, which is not essential, is inserted where it is, perhaps, desired to indicate a policy of the company in dealing with employees. The transfer of fully paid-up shares is not subject to any discretion on the part of the directors under Article 20 of Table A with regard to registration.

⁴ See Article 71 of Table A. Looking to the terms of that Article, this modification, where the company is registered on substantial lines, seems unnecessary.

⁵ Cf. Article 17, Form No. 2, p. 61, and Article 6 of Table A.

Form No. 3.Public
Company.

19. Every member shall be entitled, without payment of a fee, to one certificate for the shares registered in his name for the time being, specifying the numbers of the shares in respect of which it is issued, and the amount paid up thereon.¹

20. If any certificate be worn out or defaced, then upon production thereof to the directors, they may order the same to be cancelled, and may issue a new certificate in lieu thereof; and if any certificate be lost or destroyed, then upon proof thereof to the satisfaction of the directors, and on such indemnity as the directors deem adequate being given, a new certificate in lieu thereof shall be given to the party entitled to such lost or destroyed certificate, and the sum of 1s. shall be paid to the company for every new certificate issued under this Article.²

21. The certificate of shares registered in the names of two or more persons may be delivered to the person first named on the register, and delivery to one of such persons shall be deemed delivery to all.³

22. The minimum subscription [payable wholly in cash] upon which the directors may proceed to allotment is £
in shares [subject to receipt by the company of the sum fixed as payable on application for each share and such sum not being less than [5] per cent. of the nominal amount thereof].⁴

or

¹ This Article does not differ from Article 6 of Table A and should be omitted.

² This Article is a redundant form of Article 7 of Table A and covers no more than is there provided for. See cognate Article 18, Form No. 2, p. 62.

³ This Article is unnecessary in view of the terms of Article 6 of Table A.

⁴ The terms of section 85 of the Act must be observed in regard to the minimum subscription. It is necessary to refer to such subscription whether a public issue of capital is intended or not. This is clear from the terms of sub-section 1 (7) of this section, and where no invitation to the public is made, the minimum subscription ought to appear in the Articles, unless in the rare case of a company registering itself upon the footing that Table A wholly applies when the Memorandum is the only place left for its insertion. 5 per cent. of the nominal amount of the share is the minimum amount that can be made payable on application of a share pursuant to section 85 (1) (3). But the minimum subscription itself has no statutory limit. If a minimum

[22. Upon the company offering [for the first time] any of its shares to the public for subscription, no allotment thereof shall be made by the directors unless and until at least [10] per cent. of the shares so offered shall have been subscribed and the sum payable on application in respect of each share so offered, which shall not be less upon the occasion of any public offer than [5] per cent. of the nominal amount thereof shall have been paid to and received by the company.]

Form No. 3.

Public
Company.

Variation.

CALLS ON SHARES.

23. [Fourteen] clear days' notice¹ of any call shall be given, specifying the time or times and place of payment, and to whom such call shall be paid [subject to the right of the directors by notice in writing to the members to revoke the same or to extend the time for payment thereof].

24. The directors may from time to time make arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls.²

FORFEITURE OF SHARES.

25. If a member fails to pay any call on the day appointed for payment thereof, the directors may serve upon him a notice specifying a day (not being less than fourteen clear days from the date of the notice), and a place or places on and at which such call or instalment, with interest [and expenses that may have been incurred by the company through such non-payment]

subscription is not stated in cases where there is a public subscription or where, although no public invitation is made, shares are payable in cash, then the whole shares offered for subscription in the one case or all the shares payable in cash in the other must be subscribed for or paid as the case may be before the company can obtain a certificate to commence business. The Articles may need to be altered so as to rectify this. The importance of careful attention to this matter is obvious. See cognate Article 10, Form No. 2, p. 57, and note thereon. When a private company is turning itself into a public company, the special resolution should provide for a minimum subscription by way of alteration of the Articles.

¹ It will be seen that Article 12 of Table A makes this provision. Twenty-one days, or any other period may be substituted for the period fixed by that Article. The proviso, in brackets, at the end is seldom inserted.

² This Article is practically the same as Article 16 of Table A.

Form No. 3. are to be paid, and stating that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which the call is payable, will be liable to forfeiture.¹

Public
Company.

26. If the requisitions of such notice as aforesaid are not complied with, any shares in respect of which such notice has been given may at any time thereafter, before payment of all sums, calls, or instalments, interest [and expenses] due in respect thereof, be forfeited by a resolution of the directors to that effect, [and such forfeiture shall include all dividends declared or payable in respect of the forfeited shares, and not actually paid before forfeiture].²

27. A statutory declaration in writing under the hand of [one of] the directors [or the secretary] that the call in respect of a share was made, that notice thereof was given, that default in payment of the call or instalment was made, and that the forfeiture of the share was made by resolution of the directors to that effect, shall be conclusive evidence of the facts therein stated as against all persons who would have been entitled to such share but for such forfeiture and such declaration.³

28. Any member whose shares have been forfeited shall, notwithstanding, be liable to pay, and shall forthwith pay to the company all calls, instalments, interest, [and expenses] due upon, or in respect of such shares at the time of forfeiture, together with interest thereon from the time of forfeiture, until payment, at £ per cent. per annum, and the directors, without being bound to do so, may enforce the payment thereof if they think fit.⁴

¹ Articles 14, 15, 24, and 25 of Table A have to be kept in view. Expenses are not provided for under Article 14 of Table A, but otherwise the Articles of Table A make sufficient provision for recovery of calls with interest.

² See Article 26 of Table A and cognate Article 29, Form No. 2, p. 71. The forfeiture of the share would appear to carry all its incidents, *e.g.*, dividends, but it is common to make express provision for this. Article 9 of Table A provides for dividends in regard to the operation of the lien thereunder.

³ See Article 29 of Table A and cognate Article 31, Form No. 2, p. 71.

⁴ Article 28 of Table A is sometimes inserted with the addition "together with any interest due in respect of the same." It is thought that this addition, being implied, is unnecessary. See cognate Article 35, Form No. 2, p. 72.

LIEN ON SHARES.

Form No. 3.

Public.
Company.

29. The company shall have a first and paramount lien upon all shares [including all dividends declared thereon] fully-paid or partly paid up registered in the name of each member (whether solely or jointly with others) for his debts, liabilities, and obligations, liquid or illiquid, solely or jointly with any other person to or with the company, irrespective of whether the period for payment or discharge thereof shall have actually arrived or not; but the registration of a transfer of shares shall operate as a waiver of such lien in the absence of any stipulation otherwise by them.¹

30. The net proceeds of any sale shall be applied in and towards satisfaction of such debts, liabilities, and obligations, and the residue, if any, paid to such member, his executors, or assignees.²

31. Upon any sale for enforcing the lien of the company in exercise or purported exercise of the powers in these Articles, the directors may cause the purchaser's name to be entered on the register in respect of the shares sold; such register shall be conclusive evidence of the title of the person so registered; and the remedy (if any) of any person aggrieved by the sale shall be in damages only, and against the company exclusively.³

TRANSFER OF SHARES.

32. Any person becoming entitled to shares in consequence of the death, bankruptcy, liquidation or insolvency of any member, or by any lawful means other than by transfer in accordance with these Articles, upon producing such evidence as the directors think sufficient may be registered as a holder of such shares, or may, upon producing such evidence and executing a transfer in accordance with these Articles, have his transferee registered as such holder, provided that in such cases the directors shall have the same right to refuse registration of such person or his

¹ This form is somewhat more ample than Article 9 of Table A and includes fully-paid shares. See notes under Article 39, Form No. 2, p. 74. It is not desirable to frame Articles of this nature so as to affect fully paid-up shares.

² Sale is provided for under Article 10 of Table A.

³ Cf. Article 11 of Table A and cognate Article 42, Form No. 2, p. 75.

Form No. 3. transferee as in the case of transfer by registered members [and this Article is hereinafter referred to as "the transmission Article"].¹

Public.
Company.

33. A fee of two shillings and sixpence [may be charged for each transfer, and shall if required by the directors be paid before the registration thereof] shall be paid on the registration of every transfer.²

PROCEEDINGS AT GENERAL MEETINGS.

34. Seven [clear] days' notice at least [(exclusive of the day on which the notice is served or deemed to be served but inclusive of the day for which the notice is given)] specifying the place, the day, and the hour of meeting, and in case of special business, the general nature of such business, shall be given to the shareholders [either by advertisement or by notice sent by post or otherwise served] in manner hereinafter provided; but the non-receipt of [or the accidental omission to give] such notice by any shareholders [not exceeding one-tenth of the whole members entitled to vote at the meeting], shall not invalidate the proceedings at any general meeting.³

35. Every motion [and question] submitted to a meeting shall be decided [in the first instance] by a show of hands, unless before or upon the declaration of the result of the show of hands a poll is directed by the chairman or is demanded [in writing] by [one or more] members present personally [or by proxy, and entitled to vote] at the meeting, [holding of the whole share capital represented at the meeting] and unless a poll be so directed or demanded, a declaration by the chairman that a resolution has been carried [or carried by a particular majority or lost or not carried by a particular majority] and an entry to that effect in the minute book of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.⁴

¹ See note to Article 47, Form No. 2, p. 79.

² See Article 20 of Table A.

³ It will be observed that Article 49 of Table A only provides that the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting. This Article includes the accidental omission to give notice. See Notes to the corresponding Article 68, Form No. 2, p. 93.

⁴ See Article 56 of Table A and cognate Article 75, Form No. 2, p. 96.

VOTES OF MEMBERS.

Form No. 3.

Public
Company.

36. [The deed or document appointing a] or A proxy shall be in writing under the hand of the appointer [or his attorney duly authorised; or, if such appointer is a corporation, under its common seal [or under the hand of any director, manager, secretary, or other officer thereof signing on its behalf]. No person, unless the appointee of a corporation, shall be qualified as a proxy who is not a member of the company and entitled to vote as such at the meeting for which the [deed or document of] proxy is granted; nor unless the [deed or document of] proxy [and the power of attorney, if any, under which it is signed, or a notarial certified copy thereof] shall be deposited at the office of the company at least two clear days [or not less than forty-eight hours] before the time for holding the meeting, or adjourned meeting as the case may be, at which he proposes to vote. No [deed or document of] proxy shall be valid after the expiration of six [or twelve] months from the date of its execution, except that it may be used on the adjournment of the meeting for which it was originally intended to be given, or unless it is a power of attorney containing a general power to act and vote for a member [absent abroad] at meetings of the company, and which power of attorney, if once duly exhibited to the company, shall not require to be again exhibited to the company. A proxy to vote shall be deemed to confer power to demand a poll.

DIRECTORS.¹

37. Until otherwise determined by a general meeting, the number of directors shall not be less than [] nor more than [seven].

38. The first directors shall be _____, [and the first chairman shall be the said _____].

39. The directors shall be paid all their travelling, hotel and other expenses properly and necessarily expended by them, and there shall be appropriated annually £ _____ as remuneration to them in the proportions of £ _____ to the said _____ so long as he is chairman, and £ _____ to each of the directors, and such remuneration to them may be increased at any time by an ordinary resolution passed at a general meeting of the company.

¹ See Articles 93 to 97 dealing with directors, Form No. 2, p. 105 *et seq.*

Form No. 3.Public
Company.

40. The qualification of every director shall be the holding [in his own and beneficial and exclusive right] of at least [100] shares of the nominal value of £ , and it shall be his duty to acquire his qualification within [one month] of his election [and upon his failure to do so, he shall be deemed to have applied to the company for the said shares, and he shall be forthwith entered in the register as a member in respect of such shares.]¹

41. The office of a director shall be vacated *ipso facto*—

- (a) If he becomes bankrupt or insolvent, or suspends payment, or compounds with his creditors.
- (b) If he is of unsound mind.
- (c) If he does not acquire the required amount of shares to qualify him for office within [one] month after appointment [or election], or ceases to hold the same; and a person vacating office under this sub-section shall be incapable of being re-appointed [or re-elected] until he has obtained his qualification.
- (d) If he shall absent himself [*or* be absent] from the meetings of the directors during a period of [] months without special leave of absence from the directors duly minuted.
- (e) If he is appointed to be an auditor of the company.²

42. No director [as such] shall be disqualified from, or vacate office by reason of his or any company or partnership of which he is a member, contracting or having entered into contracts with the company, either as seller or otherwise, [or having done any work for the company], and no contract or arrangement entered into by or on behalf of the company with any company or partnership of, or in which any director shall be a member or otherwise interested shall be reducible; and no director so contracting, or being employed by the company, or being such member or so interested, shall be liable to account to the company for any profit realised by any such contract or arrangement, by reason only of such director holding

¹ See cognate Article 95, Form No. 2, p. 105.

² See notes to cognate Article 101, Form No. 2, p. 118.

that office, or of the fiduciary relation thereby established; but the interest of such director, where it does not appear on the face of the contract, must be disclosed by him at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists and be known to him, or in any other case, at the first meeting of the directors after the acquisition of his interest or of his knowledge thereof; and a general notice that a director is a member of any specified firm or a member or director of any specified company or syndicate, and is to be regarded as interested in any subsequent transactions with such firm, company, or syndicate shall be a sufficient disclosure under this Article, and after such general notice it shall not be necessary to give any special notice relating to any particular transaction with such firm, company, or syndicate.¹

Form No. 3.

Public
Company.MANAGING DIRECTORS.²

43. The directors may from time to time appoint one or more of their number to be managing director or managing directors of the company, either for a fixed term, or without any limitation as to the period for which he or they is or are to hold such office, and may from time to time dismiss or remove him or them from office, and appoint another or others in his or their place or places.

44. A managing director shall, subject to the provisions of any contract between him and the company, be subject to the same provisions, as to vacation of his office [resignation and removal] as the other directors of the company; and if he cease to hold the office of director from any cause, he shall *ipso facto* and immediately cease to be a managing director; but while he continues to hold that office he shall not be subject to retirement by rotation, and the rotation of the other directors shall be determined without regard to him.

45. The remuneration of a managing director shall, subject to the terms of any agreement in that behalf, from time to time be fixed by the directors [*or by the company in general meeting*] and may be by way of salary or commission, or participation in

¹ See cognate Article 102, Form No. 2, p. 120, and notes thereon.

² See notes in reference to managing directors, Articles 123 to 126 inclusive, Form No. 2, p. 128 *et seq.*

Form No. 3. profits, or by any or all of these modes, and that in addition to the directors' ordinary fees.

Public
Company.

46. The directors may from time to time entrust to, and confer upon a managing director, for the time being, such of the powers exercisable under these Articles by the directors as they may think fit, [except the powers to borrow money and to make calls]; and they may confer such powers for such time, to be exercised for such objects and purposes, upon such terms and conditions, and with such restrictions as they think expedient, and that either in conjunction with, to the exclusion of, or in substitution for all or any of the powers of the directors in that behalf; and they may, from time to time, revoke, withdraw, alter, or vary all or any of such powers.

BORROWING POWERS.¹

47. The directors may from time to time, at their discretion, borrow or raise [or secure] or take up any sum or sums of money for the purposes of the company, at such rate of interest and upon such terms and with such provisions in favour of the lender as they may approve, provided that the moneys so borrowed or raised [or secured] or taken up and owing at any one time shall not, without the sanction of a general meeting of the company, exceed [half] the nominal amount of the share capital [subject to the proviso that no lender or other person transacting with the company shall have any duty to inquire or see whether such limit is observed].

48. The directors may raise or secure the repayment of such moneys, in such manner and upon such terms and conditions in all respects as they deem expedient, and in particular by the issue of debentures or debenture stock of the company secured over [or charged upon] all or any part of the property of the company, including its uncalled capital for the time being.

49. The directors shall cause a proper register to be kept of all mortgages or other securities specifically affecting the property of the company [and also a register of the holders of debentures of the company, and the same shall be open to the inspection of the registered holders thereof and of any member of the company, but in his case subject to such conditions as the directors may impose and with power to the directors to close

¹ See Articles 127 to 134 inclusive in Form No 2, p. 136 *et seq.*

such register of debentures for any period or periods not exceeding in all thirty days in each year.]¹

Form No. 3.

Public
Company.DIVIDENDS [AND RESERVE].²

50. The net profits of the company shall be applied as follows:—in payment (first) to the holders of preference shares of a cumulative preferential dividend at the rate of [£6] sterling per centum per annum on the amount paid up on such shares (second) to the holders of ordinary shares of a dividend at the rate of [£10] sterling per centum per annum on the amount paid up on such shares and (third) to all the members of the company according to the amount paid up on their respective shares of the balance (if any) by way of additional dividend.³

51. The directors may from time to time pay to the members on account of the next forthcoming dividend such interim dividends as, in their judgment, the position of the company justifies; and such interim dividend may, if the directors think fit, be paid on the ordinary shares, notwithstanding that only a partial or interim dividend may have been paid on the preference shares.

or

[51. The directors, without first obtaining the sanction of a Variation. general meeting, may from time to time, after providing for all preferable payments out of profits, declare and pay to the members such interim dividends as, in their judgment, the position of the company justifies.]⁴

WINDING UP.⁵

52. If the company shall be wound up, and there shall be any surplus assets after payment of all debts and satisfaction of all liabilities of the company, such surplus shall be applied first,

¹ See notes to Articles 127 to 134, Form No. 2, p. 136. A common qualification of this Article is as follows:—"The borrowing powers hereby conferred on the directors are irrespective of any moneys borrowed from the bankers of the company or others in the ordinary course of business."

² See Articles Nos. 135 to 138, Form No. 2, p. 140.

³ See Article 98 of Table A and *Company Law and Practice*, p. 475.

⁴ Cf. Article 136 in Articles for Public Company, Form No. 2, p. 140.

⁵ Cf. Article 182 in Articles for Public Company, Form No. 2, p. 167, and also Miscellaneous Winding Up Clauses in that Form, p. 168.

Form No. 3. subject to the rights of members entitled to shares issued upon special conditions, in repaying to the holders of any preference shares, the amount paid up or credited as paid up thereon, and any arrears of dividend thereon, and the balance in repaying to the holders of the ordinary shares, the amounts paid up or credited as paid up on such ordinary shares; and if there shall remain any surplus assets after repayment of the whole of the paid-up capital, such surplus assets shall be divided among the ordinary shareholders in proportion to the capital paid up or credited as paid up on the shares which are held by them respectively at the commencement of the winding up.¹

53. If the company shall be wound up, the liquidators (whether voluntary or official) may, with the sanction of an extraordinary resolution, divide among the contributories in [scrip or] specie any part of the assets of the company, and may, with the like sanction, vest any part of the assets of the company in trustees upon such trusts for the benefit of the contributories as the liquidators, with the like sanction, shall think fit.

NAMES, ADDRESSES, AND DESCRIPTIONS OF SUBSCRIBERS.

RICHARD W. HOLLAND, Printer, Upper Park Road, Paisley.
 T. C. SCOTT BIRKHEAD, Patent Agent, 156 Nile Street, Glasgow.
 HUBERT JOHNSTON, Advocate, 179 West Park, Aberdeen.
 ROB. BANNERMAN, Chartered Accountant, Lynwood, Dundee.
 JOSEPH PATERSON, Merchant, 182 West George Street, Glasgow.
 CHARLES HENDERSON, Law Clerk, 109 West George Street, Glasgow.
 JOHN HOTSON, Law Clerk, 109 West George Street, Glasgow.

Dated the day of , Nineteen hundred and nineteen.

Witness to the above signatures—

R. S. WILSON, *Law Clerk*,
 109 West George Street, Glasgow.

Note.—The statutory forms of the Memoranda and Articles follow the English mode of placing the description or designation of a subscriber after his address, but the Scottish style as here given is frequently followed in Scotland. The signatories and witnesses to both the Memorandum and Articles of Association should be identical.

¹ See Winding Up Articles in Form No. 2, p. 167 *et seq.*, and relative notes.

ARTICLES OF ASSOCIATION.

III.—PRIVATE COMPANY LIMITED BY SHARES.

TABLE A NOT ADOPTED.

Form No. 4.

GENERAL NOTES.

THE Editor refers to the General Notes applicable to similar Articles for Public Companies. The same observations apply in the main to Private Companies adopting the style of independent Articles in place of Table A adopted by reference and subject to modifications. The chief distinction lies in the provisions necessarily made by Private Companies for restriction upon their membership in terms of section 121 of the Act as amended by the Companies Act, 1913, and upon the right of transfer and for prohibition of public subscription of their share capital.

Private
Company :
Transfer
restriction.

ARTICLES OF ASSOCIATION
OF
PRIVATE COMPANY LIMITED BY SHARES.
TABLE A NOT ADOPTED.

Form No. 4.

THE COMPANIES ACTS, 1908 to 1917.

[PRIVATE] COMPANY LIMITED BY SHARES.

ARTICLES OF ASSOCIATION
OF
LIMITED.

CONSTITUTION [*or* FUNDAMENTAL *or* PRELIMINARY].

1. The company [*or* Limited] is formed [*or* established] as a private company in accordance with and subject to the provisions of The Companies Acts, 1908 to 1917, and the provisions of its Memorandum of Association and of these Articles and under the declaration that the regulations contained in Table A in the First Schedule to The Companies (Consolidation) Act, 1908, are hereby excluded.¹

2. The number of members of the company (exclusive of persons who are in the employment of the company and of persons who, having been formerly in the employment of the company, were while in such employment and have continued after the determination of such employment to be members of the company) shall not exceed fifty at any time and any transfer which

¹ It appears to be superfluous to provide as is occasionally done that "The company shall have right at any time, by complying with the provisions of sub-section (2) of section 121 of The Companies (Consolidation) Act, 1908, to turn itself into a public company." A special resolution is required with the consequential alteration of the Articles also by special resolution under which the Articles peculiar to a private company are deleted and any additional Articles suitable and necessary to a public company are substituted.

would if [accepted for registration *or*] registered [result in the] increase of the members of the company (exclusive of such other members as aforesaid [*or* who are or have been employees of the company]) beyond fifty shall be inoperative and shall be rejected by the directors [*or* the name of the transferee in such transfer shall not be entered in the register], [and subject always to the proviso that joint holders of shares shall for the purposes of this Article be regarded as a single member] and providing that the registration of any transfer whatever may be refused by the directors without any reason assigned.¹

Form No. 4.

Private
Company.

3. All invitation to the public to subscribe for any shares or debentures or debenture stock of the company by the company or its directors [*or* other officials or agents] is hereby prohibited.²

4. No part of the funds of the company shall be applied in the purchase of or in loans upon the shares of the company.³

INTERPRETATION.⁴

5. In the construction of these Articles, unless the context otherwise requires, words importing the singular shall include

¹ This Article gives effect to the amendment of section 121 of the Act of 1908 by the Act of 1913. That Act was passed in consequence of the decision in *Royalties*, 1912, 1 K.B. 330, and it requires that the company shall annually certify that the statutory limit of fifty members apart from employee members has not been exceeded. The proviso in brackets has statutory warrant in sub-section (3) of section 121 of the Act, and while it need not be expressed, it is perhaps convenient to do so. The concluding proviso of the Article will be omitted in cases where more elaborate provisions are desired in regard to the control of share transfers.

² This Article is frequently expressed in the negative form. See cognate Article 3 in Articles for Private Company—Form No. 5, p. 257.

³ This Article is more appropriate to a public company, and in its case it is only required to satisfy Stock Exchange requirements. See note to cognate Article 2 in Articles for Public Company—Form No. 2, p. 49.

⁴ It is not absolutely essential to have an Interpretation Article, and in many Articles it does not appear. Article 1 of Table A is sufficient for all practical purposes. Words defined by the Act, *e.g.*, "Special Resolution," "Statutory Meeting," &c., must be construed as the Act directs. In adjusting Articles, care must be taken to see that the Articles are consistent with this Article, if inserted, and the words or expressions specially defined apply to the Articles of the particular company. If the Articles, *e.g.*, do not contemplate the conversion of shares into stock, the definition of shares will be omitted, or if the

Form No. 4. the plural, and *vice versa*, or importing the masculine gender shall include the feminine, or importing persons shall include corporations, companies, governments, bodies, and firms of all kinds, and words and expressions defined in the interpretation or other clauses of the Companies Acts 1908 to 1917, shall have the meanings so defined, and writing shall include printing, lithography, and other usual substitutes for writing whether wholly of one or partly of two or all of these, and further, the following words and expressions, unless the context otherwise requires, shall have the meanings hereby assigned to them namely:—

Private
Company.

“Acts” means The Companies Acts, 1908 to 1917; “the Act of 1908” means The Companies (Consolidation) Act, 1908; and “the Act of 1913” means The Companies Act, 1913, [and any statutory modification of these Acts, or one or other of them for the time being].¹

“Articles” means [and includes] these Articles [and all supplementary, amended, or substituted Articles for the time being in force].²

“Board” and “Board Meeting” mean and include [the directors for the time being of the company and] such of the directors as shall be assembled at and sufficient to constitute a [quorum of the directors assembled *or*] board meeting in accordance with these Articles.¹

“Capital” means the share capital from time to time of the company.³

Articles refer to shares, *e.g.*, as “paid up or credited as paid up,” the definition of “paid up” will likewise be omitted. As to “clear days,” see *Company Law and Practice*, pp. 125, 129, and Article 49 of Table A.

¹ The bracketed portion is superfluous.

² “Articles” is specifically defined in the Interpretation section—285—of the Act, and for that reason, upon the scheme of this Article it should not be included. To embrace the Memorandum under the expression “these Articles” or “these presents” or to include “any alterations or additions by special resolution” seems incorrect. See General Notes upon Articles for Public Company—Form No. 2, p. 46.

³ In settling the Articles care must be taken to see that the Articles as a whole are consistent with this “Interpretation” Article, *e.g.*, “share” capital will not be used. The Article is somewhat full as illustrating the usual words specially interpreted, but many are unnecessary, and may like the Article itself in any form be dispensed with.

Form No. 4.

"Clear days" means the days intervening between and exclusive of the day upon which any act or notice shall have been deemed to have been done or served, and the day upon which the next result of such act or to which such notice shall take effect or apply.¹

Private
Company.

"Company" means (*insert name*) , Limited.

"Directors" means the [whole] directors for the time being of the company [or a quorum of them, duly called and assembled in accordance with these Articles].

"Dividend" includes "bonus."²

"General meeting" means a meeting, whether ordinary or extraordinary, of the company, duly convened and constituted, or any adjournment thereof.

"Managing director" means [the subscriber, or his successor or successors in office for the time being,] as managing director or managing directors of the company.

"Member" means a person registered or entitled under the Memorandum of Association or these Articles to be registered as a holder of [preference or ordinary] shares of the company.

"Month" means calendar month.

"Office" means the registered office of the company for the time being.

"Paid up" includes "credited as paid up."

"Register" means the register of members of the company to be kept in compliance with section 25 of the Act.

"Seal" means the common seal of the company in use for the time being.

"Secretary" includes any person appointed to perform temporarily the duties of secretary.³

¹ See notes to cognate Article in Form No. 2, p. 49.

² See notes to cognate Article in Form No. 2, p. 49.

³ Some Articles provide by one of the Articles for the appointment of a particular individual as the first secretary, but although very useful, it is not necessary to do so.

Form No. 4. "Share" means a share in the share capital of the company.¹

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"Special resolution" and "extraordinary resolution" mean respectively a special resolution and extraordinary resolution of the company as defined by section 69 of the Act.¹

"Statutory meeting" means the first general meeting of the members of the company to be held in compliance with section 65 of the Act.²

"Year" means calendar year.

BUSINESS.

6. [The first business of the company shall be to acquire and take over as a going concern the business of

, now carried on at , under the style or firm of , and all or any of the property, assets, and liabilities thereof, and for that purpose] the company shall forthwith adopt the agreement specified in the Third branch clause (1.) of the Memorandum of Association, and the directors [or managing director] shall carry such agreement into effect, with full power, nevertheless, from time to time, to agree to any modifications in the details thereof [and as the terms of such agreement have been settled by

, the promoters of and sellers to the company under such agreement, and as the sellers have fixed the purchase consideration therein expressed to be given by the company as the consideration they are willing to take, and at which alone they are prepared to sell, no objection shall be taken to such agreement by the company or any member of the company in respect that there is not and was not any independent executive. and that no neutral valuation of the assets acquired by the company was obtained; and the sellers under such agreement shall not be liable to account to the company or to any member of the company for any profit by reason of any fiduciary relation to the company or any member of the company, and all shares to be issued for cash or otherwise shall be allotted upon the basis of every member, present and future, being deemed to have assented to all the terms of such agreement as

¹ See section 285 of the Act and *Company Law and Practice*, p. 127, *et seq.*

² See notes in cognate Article 3 in Articles for Public Company—Form No. 2, p. 49.

after full notice thereof, [and the shares to be allotted under the said agreement shall include the shares for which the allottees or any of them have subscribed the Memorandum of Association [or, and further any shares to be issued as fully paid under such agreement to any subscriber of the Memorandum of Association shall be held as discharging his obligation as such subscriber to take shares in terms of his subscription thereof].¹

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7. All expenses incurred in connection with the formation, registration, and incorporation of the company shall be a first charge upon the funds of the company and be payable out of its first and readiest available assets.²

8. The company may at any time pay a commission to any person for subscribing or agreeing to subscribe either absolutely or conditionally for any shares in the company or procuring or agreeing to procure subscriptions, absolute or conditional, for any shares in the company, subject to the condition that no commission shall be paid or payable out of capital unless the provisions of the Act are complied with, and in no case shall the commission exceed [10] per cent. on the shares in each case subscribed or to be subscribed.³

¹ In the case of a Private Company there is not or ought not to be the same anxiety for the insertion of such an Article with reference to the non-impeachment of the agreement to be adopted by the company as conditioned in the bracketed part. See notes on cognate Article 5 in Articles for Public Company—Form No. 2, p. 52. The agreement to be adopted may not be referred to in the Memorandum, and in such a case the Article may describe it as, *e.g.*, “in terms of the draft which, for the purpose of identification, has been signed by the subscribers of the Memorandum of Association,” or as the case may be. Further, this Article may simply run—“The secretary [or] shall be authorised by the directors on behalf of the company to accept on its behalf a proposal for the sale to the company as a going concern of the business and assets of , under burden of the whole liabilities and obligations of the said in connection therewith.” In many Private Companies there is no Board and the whole management of the company is vested in a Governing or Managing Director. In such circumstances all the Articles will be altered as suggested by the bracketed reference to the Managing Director as the case may be.

² Where detailed powers are not taken by the directors under the usual “Powers and Duties of Directors” series of Articles, it may be advisable to have this provision. Preliminary expenses can be paid by the company without express authority in the Articles.

³ See note to cognate Article 12 in Articles for Public Company—Form No. 2, p. 59.

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[BUSINESS.

Ancillary Articles.

[1. The business of the company shall be [carried on by, *or*] under the management [*or* direction] of, the directors, [*or* managing director] [or their committee or committees as herein-after provided, or of the parties whom the board or such committee or committees may appoint,] and subject only to the control of general meetings in accordance with these Articles.¹

[2. The directors and any persons expressly authorised by their resolution, and acting within the limits of their authority so conferred, shall have the only authority to enter into any contract on behalf of the company, or to accept, make, draw, or endorse any bill of exchange or promissory note on behalf of the company, or otherwise to bind or pledge the credit of the company.]¹

SEAL.

9. The company shall have a common seal, which shall be in the custody of the secretary, or such other officer as the directors [*or* managing director] may appoint, and which shall never be used except by the authority of the directors [*or* of the managing director] previously given, and every deed or other writing to which the seal is required to be affixed shall be subscribed by one [*or* two] directors [*or* the managing director] and the secretary; and a record of every deed so sealed shall be kept by the secretary in a book to be provided for the purpose.²

OFFICE.

10. The office shall be in _____ or at such other place as the directors [*or* the managing director] may from time to time appoint, and the directors [*or* the managing director] may

¹ These Articles are common but are not essential.

² See notes on cognate Article 6 in Articles for Public Company—Form No. 2, p. 54. It is the exception in the case of Private Companies, unless contemplating interests abroad, to provide for an official seal in terms of section 79 of the Act. If the secretaryship is to be held by a firm or more than one individual, then the Article can be altered accordingly in reference to the execution of deeds under seal, *e.g.*, “or one of the secretaries, if there be more than one.” The absence or illness of the secretary may be provided for by stating that in such event “another director may act in lieu of him.”

establish branch offices as they [or he] may think fit in the United Kingdom or abroad.¹

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SHARE CAPITAL AND SHARE CERTIFICATES.

11. The share capital of the company is £ sterling, divided into [ordinary] shares of £ each [and preference shares of £ each. The preference shares shall bear a [cumulative] preferential dividend at the rate of [£5] per centum per annum, and as regards both capital and revenue shall rank in priority to the ordinary shares [to the extent only of such capital and dividend, whether declared or not,].] The shares shall be issued and allotted by the directors [or by the managing director.]²

12. Subject to the provisions contained in the agreement mentioned in Article [6] with reference to the shares to be allotted in pursuance thereof, the issue and allotment of shares and the terms and conditions thereof shall be in the sole discretion of the directors [or of the managing director], and the directors [or the managing director] may allot or issue fully or partly paid-up shares in the company as payment or part payment of any property, business, or rights acquired from, or for services rendered or to be rendered to, the company by any person, including the managing director.

13. The directors [or the managing director] from time to time may make arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls.

14. The directors [or the managing director] may, if they think fit, receive from any member willing to advance the same, [and either in money or money's worth] all or any part of the money due upon the shares held by him beyond the sum actually called

¹ The office here means the registered office where an "Interpretation" Article is part of the Articles. Care should be taken generally in such a case that the registered office is identical in situation with the head office of the company. This Article is, however, unnecessary. In cases where by the Articles, any change in the situation of the registered office is not provided for as is done here by making it depend on the resolution of the directors, the Articles would require to be altered by special resolution before such change could be made. See note ², p. 56.

² See notes on cognate Article 9 in Articles for Public Company—Form No. 2, p. 56.

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for, and upon the moneys so paid [or satisfied] in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate, not exceeding £ per cent. per annum, and upon which as the member paying such sum in advance and the directors [or the managing director] agree [but no dividends shall be payable in respect of any moneys so advanced].¹

15. Every member shall be entitled, without payment of any fee, to a certificate for the shares registered in his name for the time being under the common seal of the company [signed by one director [or by the managing director] and countersigned by the secretary] specifying the numbers of the shares contained therein with their distinguishing numbers in the register and stating the amount paid up or deemed to be paid up thereon; but where any shares are held jointly by two or more persons such persons shall not be entitled to delivery from the company of more than one certificate in respect of such shares, and delivery to any one of the joint holders thereof shall be made and held as delivery to all of them.²

16. If any certificate is defaced, worn out, lost, or destroyed, the directors [or the managing director] may renew the same on payment of such a sum, not exceeding one shilling, as the directors [or the managing director] may prescribe, and subject to the party applying therefor giving up the defaced or worn out certificate or proving its loss or destruction and granting an indemnity to the satisfaction of the directors [or the managing director], and in the event of any additional certificate being otherwise applied for, the same may be issued upon payment of a fee therefor, not exceeding one shilling.

CALLS.

17. The directors [or the managing director] from time to time may fix and determine the sum or sums (if any) payable on allotment of shares at which the shares shall be issued, and from time to time may make such calls as they [or he] may think fit upon the members, in respect of all moneys unpaid on the shares

¹ See notes to cognate Article 26 in Articles for Public Company—Form No. 2, p. 69.

² See notes on cognate Article 17 in Articles for Public Company—Form No. 2, p. 61.

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held by them respectively, and not by the conditions of allotment thereof made payable at fixed times, provided that no call, which may be made payable by instalments, shall exceed one-fourth of the nominal amount of a share, or be made payable within two months after the last preceding call was payable, and each member shall pay the amount of every call so made on him to the persons and at the times and places appointed by the directors [*or the managing director*].¹

18. Calls shall be deemed to have been made at the time when the resolution of the directors [*or the managing director*] authorising the same was passed, and an entry in the minute book of the resolution [*of the directors*] making any call shall be conclusive evidence of the making thereof.²

19. Fourteen clear days' notice of any call shall be given, specifying the time and place of payment, and to whom such call shall be paid; and if the sum payable in respect of any call or instalment be not paid on or before the day appointed for payment thereof, the [*allottee or*] holder for the time being of the share in respect of which the call shall have been made, or the instalment shall be due, shall, in the option of the directors [*or the managing director*] pay interest for the same, at such rate as the directors [*or the managing director*] may fix, not exceeding the rate of [] per cent. per annum, from the day appointed for the payment thereof to the time of the actual payment, and shall also pay all expenses which the company may have incurred, or become liable for, to procure payment of, or in consequence of the non-payment of such call, but the directors [*or the managing director*] may, in their [*or his*] absolute discretion, waive or remit payment of such interest and expenses in whole or in part.³

20. Joint holders of shares shall be jointly and severally liable for payment of all calls in respect thereof.⁴

¹ See notes on cognate Article 19 in Articles for Public Company—Form No. 2, p. 66.

² Cf. cognate Article 20 in Articles for Public Company—Form No. 2, p. 67.

³ Cf. cognate Articles 21 and 22 in Articles for Public Company—Form No. 2, p. 67, and relative notes.

⁴ Cf. cognate Article 23 in Articles for Public Company—Form No. 2, p. 68.

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21. Any sum (whether on account of the amount of a share or by way of premium thereon) which by the terms of allotment of a share is made payable upon allotment or at any fixed date shall, for all purposes of these Articles, be deemed to be a call duly made and payable on the date fixed for payment, and, in case of non-payment, the provisions of these Articles as to payment of interest, expenses, and the like, and all other appropriate provisions of these Articles, shall apply as if such sum were a call duly made and notified as hereby provided.¹

22. The directors [*or the managing director*] may recover unpaid calls or instalments with interest and expenses, by action or otherwise, without prejudice to the right to forfeit the shares, and either or both of such rights may be exercised by the directors [*or the managing director*], and in any action to be brought by the company against any shareholder to recover any debt due for any call or instalment it shall be sufficient to prove that the defender is the registered holder of the shares in respect of which such debt accrued, that in the case of a call or instalment, the resolution of the director thereanent is duly entered in the minute book of the company, and that notice of such call or instalment was duly given, and it shall not be necessary to prove the power of the directors [*or managing director*] to make such call or any other matter whatever.

TRANSFER AND TRANSMISSION OF SHARES.

23. The [*deed of*] transfer of any share shall be executed both by the transferor and the transferee; and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register in respect thereof, and the execution of such deed [*or transfer*] by either of such parties or of any consenter thereto shall be sufficiently attested by one witness.²

24. Shares shall be transferred [*by deed*] in the usual common form as follows [*or in such other form*] of which the directors

¹ Cf. cognate Article 24 in Articles for Public Company—Form No. 2, p. 68.

² See notes on cognate Article 43 in Articles for Public Company—Form No. 2, p. 76.

[or the managing director] shall approve, and as near thereto as circumstances shall permit:—

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"I, _____ of _____, in consideration of the
 "sum of £ _____ paid to me by _____ of _____
 "_____ (hereinafter called 'the transferee')
 "do hereby transfer to the transferee the shares
 "numbered _____ in _____
 "(insert name), Limited, to hold unto the transferee,
 "his executors, administrators, and assigns, subject
 "to the several conditions on which I held the same
 "at the time of the execution hereof: and I, the
 "transferee, do hereby agree to take the said shares
 "subject to the conditions aforesaid. As witness our
 "hands the _____ day of _____ 1919.

"Signed by the above-named _____ in presence of _____¹."

25. The directors [or the managing director] in their [or his] absolute discretion and without assigning any reason therefor may refuse to register the transfer of any shares [in respect of which the company has a lien or of any shares not fully paid up] to any person of whom they [or he] shall not approve as transferee, and the directors [or the managing director] may suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. No [deed of] transfer may be registered unless—

- (a) a fee not exceeding two shillings and sixpence is paid to the company in respect thereof, and
- (b) the [deed of] transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors [or the managing director] may reasonably require to instruct the title and right of the transferor to transfer the shares specified in the [deed of] transfer.²

¹ It is sufficient to prescribe simply the usual common form without setting it out. See notes to cognate Article 44 in Articles for Public Company—Form No. 2, p. 77.

² It is essential to the constitution of a Private Company that it must, by its Articles, restrict the right to transfer its shares; but section 121 of the Act prescribes no rules upon the subject, so that the method of restriction is left to discretion. It may be expressed simply and abso-

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26. The executors or administrators of a deceased sole holder of shares shall be the only persons recognised by the company as having any title to the shares; and in the case of shares registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the shares.¹

27. Any person becoming entitled to shares in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as from time to time may be required by the directors [*or the managing director*] have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors [*or the managing director*] shall, in either case, have the same right to decline or suspend registration as they [*or he*] would have had in the case of a transfer of shares by the deceased or bankrupt person before the death or bankruptcy.²

28. Any person becoming entitled to shares by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the shares except that he shall

lately as in the form without the limitations specified in the bracketed portion as to lien on fully paid shares. These limitations are inserted in the Articles of Public Companies for the purpose of obtaining Stock Exchange quotations. Such limitations should not appear in Articles for Private Companies. All the shares in such companies must be made subject to restriction in terms of section 121 of the Act. A common Article, simple, general, and absolute in its terms, is the following:—“All transfers of shares shall be subject to the approval and sanction of the [Board of] directors [*or the managing director*] and the [Board] directors [*or the managing director*] without assigning any reason, may refuse to accept or register any transfer.” In many cases, however, in the case of Private Companies, the right of transfer is elaborately fenced with detailed provisions, so as to preserve continuity of family or other interests in the control of the company, and several forms of Articles to meet the requirements of such cases based upon Articles which have been registered are given below Article 28 under the heading of “Variations as to Transfer Rights.” See notes to cognate Article 45 in Articles for Public Company—Form No. 2, p. 78.

¹ Cf. Article 46 in Articles for Public Company—Form No. 2, p. 79, and see cases cited in note thereto.

² Cf. cognate Article 47 in Articles for Public Company—Form No. 2, p. 79, and see note thereon.

not, before being registered as a member in respect of the shares, **Form No. 4.**
be entitled in respect of it to exercise any right conferred by Private
membership in relation to meetings of the company.¹ Company.

[VARIATIONS AS TO TRANSFER RIGHTS.²

(a) *Variation.*

[1. All transfers of shares shall be subject to compliance with Variation.
the following conditions:—

(a) The member transferring shall first, in writing, offer the shares (hereinafter called the “offered shares”) to the directors [*or the managing director*] for purchase by them [*or him*], or by their [*or his*] nominees, either at a price specified in the said offer, or without specifying any price, in which case the shares will be held to be offered at the price hereinafter defined as the standard price, and the offer in the case of shares shall operate, as if it were a separate notice in respect of each of the shares and shall not be revocable except with the sanction of the directors [*or the managing director*].

(b) If the directors [*or the managing director*] shall, within three weeks from the date of such offer, accept the offered shares on behalf of themselves [*or himself*], or any nominees, at the price specified in the offer or at the standard price, the member transferring shall sell and transfer the offered shares to the directors [*or the managing director*], or to nominees, as the case may be, and the directors [*or the managing director*] shall have absolute discretion in selecting such nominees, and shall be, notwithstanding that the offered shares may have been offered at a different price, entitled to accept the offered shares at the standard price.

¹ See note to Article 48 in Articles for Public Company—Form No. 2, p. 80.

² These variations deal chiefly with rights of pre-emption, but it is not unusual to find Articles giving the directors power to expropriate the shares of members in certain circumstances, *e.g.* on account of their competition with the company. See *Kershaw, Leese—Sidebottom*, 1920, 1 Ch. 154. Such Articles must be put in operation for the benefit of the company only. See Variation (b) of this Form, p. 206.

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(c) If the directors [*or the managing director*] shall not accept the offer or shall fail to offer the standard price within three weeks, or shall refuse the offer within that period, the member transferring may transfer the shares to any purchaser approved of by the directors [*or the managing director*], but the directors [*or the managing director*] shall, notwithstanding their [*or his*] refusal to purchase, or failure to offer as aforesaid, have an absolute discretion to decline to register any purchaser whatever without assigning any reason for the refusal.

(d) In the event of the directors [*or the managing director*] refusing to purchase or failing to offer as aforesaid, and thereafter declining to approve of any purchaser put forward by the member transferring, the latter shall be bound to continue to hold the share or shares, and shall be entitled at the expiry of six months from the date of first offering the shares to offer them again to the directors [*or the managing director*] under conditions stated in sub-sections (a) and (b) of this Article.

Variation.

[2. The standard price shall be a price ascertained and certified by the auditor of the company as the intrinsic value of the shares, but in certifying the said value he shall in no case fix the sum at less than the par value of the shares under valuation (that is, the amount paid up or held to be paid up for the time being on each share), nor at a value exceeding the par value by more than [] per cent. thereof, and the member shall have no right to challenge the valuation so put upon the shares by the auditor, who shall be regarded as acting as an expert and not as an arbiter, and his certificate shall be final and binding.

Variation.

[3. Any member [other than a director] in the employment of the company on ceasing to be employed by the company, if so required by the directors [*or the managing director*], shall be bound to sell his shares to the nominees of the directors [*or the managing director*], and that under the same conditions as are hereinbefore provided with reference to transfers of shares; and upon his death his executors and administrators, or on

his bankruptcy, or in the case of his insanity, his trustee or assignee or curator shall likewise, if so required, be bound to sell his shares under such conditions; [and any director [or the managing director] other than the said

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upon his ceasing to hold office as such shall also be bound to sell his shares in compliance with this Article if so required by the directors [or the managing director].]

[4. The directors [or managing director] may refuse to register any transfer of shares [upon which the company has a lien, and] without assigning any reason [may refuse to register any transfer to a person of whom they [or he] do not approve.]]¹

Variation.

[5. If in any case the member transferring, after having become bound as aforesaid, makes default in transferring the shares, the company may receive the purchase money, and the directors [or the managing director] shall thereupon cause the name of the member purchasing to be entered in the register as the holder of the shares, and shall hold the purchase money in trust for the member transferring, and the receipt of the company for the purchase money shall be a good discharge to the member purchasing, and after his name has been entered in the register in purported exercise of the aforesaid power the validity of the proceedings shall not be questioned by any person.

Variation.

[6. The executors or administrators of a deceased member, not being one of several joint holders, shall be the only persons recognised by the company as having any right or title to the registered shares of such member, and in the case of the death of one or more of any of the joint holders of registered shares, the survivors shall be the only persons recognised by the company as having any title to or interest in such shares.

Variation.

[7. Any person becoming entitled to a share in consequence of the death or incapacity of any member may, in the option of the directors [or the managing director] be registered as a member upon such evidence being produced as they [or he] may require; nevertheless, the directors [or the managing director] shall be entitled to require such person to sell, transfer, and convey the said share to themselves [or himself], or their [or his] nominees, and that at the standard price fixed by the auditor.

Variation.

¹ See Article 24 in this Form No. 4, p. 200.

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Variation.

[8. The trustee [or assignee] of any bankrupt member, and such bankrupt member, during his bankruptcy, shall not be entitled to exercise any of the rights of a member, but such trustee [or assignee] shall, subject to the provisions of these Articles, be bound to sell the shares of the said bankrupt member in manner provided for by these Articles with reference to ordinary transfers of shares, and a bankrupt member shall for the purposes of these Articles include a member who has granted a trust deed for behoof of his creditors.]

(b) Variation.

Variation.

[1. The first named director in Article hereof shall be entitled at any time, or from time to time, and that whether he is then a director of the company or not, to transfer, by deed *inter vivos* or *mortis causa*, the whole or any part of the shares [preference or ordinary] held by him, with or without consideration to his wife or children or remoter descendants, or to the husbands or wives of such children or remoter descendants, or to his sisters or their descendants, or to the husbands or wives of such sisters or their descendants, or to any member or employee of the company.

Variation.

[2. The directors, subject to the foregoing Article, may, without assigning any reason, decline to register any transfer of any share, and in particular (without prejudice to such generality) no share so long as the directors are willing to acquire the same for themselves, or their nominees, in manner after specified shall be transferred to a stranger without the previous unanimous approval of the directors of the proposed transferee.

Variation.

[3. In order to ascertain whether the directors are willing to purchase for themselves or their nominees any shares offered for sale, the seller, whether entitled in his own right or otherwise, shall give notice to the directors, through the secretary, that he desires to sell the shares, specify the price asked by him therefor (hereinafter called "the specified price"), and such notice shall be irrevocable, and shall constitute the directors his agents to contract with themselves or their nominees for the sale of the shares at the specified price, if they consider the same reasonable, or, in their option, at the fair value to be determined on as after-mentioned,

[4. If the directors fail for the space of _____ days **Form No. 4.**
 after receipt of such notice to sell to or find a person (who may **Private**
 in every case be one of themselves) willing to purchase the **Company.**
 shares, and to give notice thereof within that time to the seller, **Variation.**
 the shares may, subject to the directors' right to decline to
 register any transfer as aforesaid, be disposed of by the seller
 free of the restrictions upon sale under these Articles; but, in
 the event of the directors so selling to or finding a person willing
 to purchase the shares, the seller shall be bound forthwith to
 execute and deliver a transfer of the shares in exchange for
 the price.

[5. In the event of the directors considering the specified **Variation.**
 price unreasonable, the value of the shares offered for sale
 through the directors as aforesaid shall, failing agreement, be
 fixed by a chartered accountant, to be nominated by the directors
 [or the solicitors] of the company, whose fee shall be borne
 mutually by the seller and purchaser, and such chartered
 accountant, who may be the auditor of the company for the
 time being, shall be sole arbiter in the premises, and his decision
 shall be final and binding on all concerned.

[6. Shares in the company may, subject to all the provisions **Variation.**
 of these Articles, be transferred in any form which may be
 prescribed by the directors, or, failing that, the form generally
 used for such transfers; and it is provided that one witness to
 the execution of each [deed of] transfer shall be sufficient.

[7. The transfer books shall be closed during the fourteen **Variation.**
 days immediately preceding the ordinary general meeting in
 each year.

[8. In the event of the death of any member the right and **Variation.**
 title of his executors or administrators, and, in the event of the
 bankruptcy [or insolvency] of any shareholder, the right and
 title of his trustee [or other representatives], shall be limited
 in the absence of their registration respectively as members
 to the right to receive dividends and to transfer, subject to
 these Articles.

[9. Shares registered in the joint names of two or more **Variation.**
 persons may be transferred by the survivors or survivor.

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Variation.

[10. The executors or administrators of a deceased member, or the trustee [or other representatives] of a bankrupt [or insolvent] member may be registered as members in these respective capacities upon such evidence being produced as may from time to time be required by the directors.

Variation.

[11. Any employee of the company to whom shares have been transferred or allotted, [including those who are or may become directors, with exception of the said first named director under Article hereof], shall be bound, on leaving such service or being discharged therefrom, [or vacating office as director,] and his executors shall be bound, in the event of his death, and his trustee in bankruptcy in the event of his sequestration, to offer such shares to the directors, and such shares shall be treated in all respects as shares offered for sale in terms of the provisions in Article [3] hereof.]¹

(c) Variation.

Variation.

[1. Any member (other than the executors of a deceased member) may at any time sell or transfer the shares, or any of them, held by him to any other member of the company, and that upon such terms as may be agreed to by them.

Variation.

[2. In the event of any member desiring to sell or transfer his shares, and electing not to avail himself of the power of private sale or transference to other members, or being unable privately to find a purchasing member, or in the event of the bankruptcy or decease of any member, the shares held by him shall be offered through the directors by him or his trustee or by his executors or other representatives, as the case may be, to the other members of the company at a valuation to be made by the auditor of the company, as at the date of such offer, or as at the date of sequestration or such deceased member's death, as the case may be, and in the event of the other members declining to purchase the shares, or any of them, so offered, at that price, such member, or his trustee or the executors of such deceased member, may dispose of his shares or any of them remaining unsold to any person other than a member of the company at the price so fixed or at any higher price, but not at any less price until he or they shall have again offered them in the same manner to the other members of the company at such less price.

¹ It does not appear to be desirable to embrace directors in such provisions.

[3. In the event of any such offerer or bankrupt member or deceased member holding at the date of offer, sequestration, or death more than one-half of the issued capital [preference and ordinary combined] of the company, and of the other members of the company, or any of them electing to purchase the whole or at least one-half of such shares at the price fixed as aforesaid, the offerer or his trustee or the executors, as the case may be, shall be bound, if required by the purchaser to do so, to accept payment of said price, or any part thereof, by four equal instalments at the expiration of twelve, eighteen, twenty-four, and thirty-six months from the date of sale, with interest at the rate of five pounds sterling per cent. per annum on the balance from time to time unpaid, with power to the purchaser to anticipate the payment of any instalment, and to obtain a corresponding rebate of interest: provided always that security for due payment of the last two instalments, to the satisfaction of the offerer or trustee or executors be given by the purchaser; and in the event of the remaining members of the company, or any of them, not purchasing the said shares, or at least one-half of them as aforesaid, the said offerer or trustee or executors may insist upon the company being wound up, and the remaining members shall be bound to concur in the passing of all resolutions, and in the adoption of all steps and proceedings necessary for that purpose.¹

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Variation.

[4. Two or more members, or one or more members and the trustee or trustees in bankruptcy or the executors of one or more members, or the trustees in bankruptcy or the executors of two or more members, shall be entitled to combine so as to offer their shares as one holding in terms of these Articles, and if such combined holding shall *in cumulo* amount to more than one-half of the issued capital of the company, the provisions thereof shall apply, as regards the other members of the company, in all respects as if such proportion had been held by one member, or the trustee or executors of a member bankrupt or deceased.

Variation.

[5. The price of any shares so offered in combination shall be determined as at the date of the immediately succeeding balance, within three months at latest of the completion of which the remaining members respectively shall be bound to intimate their decisions.

Variation.

[6. In any case where there shall be more than one purchasing member, the shares offered for sale shall be divided among such

Variation.

¹ See note ², p. 203.

Form No. 4. purchasing members in the proportion as nearly as possible in which they already hold shares in the company: provided, however, that no purchasing member shall be bound to take a greater number of shares than he shall have offered to purchase, and that any shares which cannot be so divided without creating fractions shall be apportioned by the directors among the purchasing members as they shall think proper.

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Company.

Variation. [7. Any ordinary shares of a bankrupt or deceased member holding at the date of sequestration or death less than one-half of the issued capital of the company as aforesaid, which may not be purchased by the remaining members, or any of them, in virtue of the foregoing powers, may be converted by the company or the directors at the request of the member's trustee or the deceased member's executors, at any time within eighteen months after the date of sequestration or death into preference shares, provided always that the number of ordinary shares to be so converted shall not exceed the number of preference shares of the company for the time unissued, and upon such conversion taking place, a corresponding number of the original unissued preference shares of the company shall be deemed to be simultaneously converted into ordinary shares—the intention being that the proportions of nominal preference and ordinary capital, as originally fixed, shall not, by the exercise of this right, be interfered with.]

Variation.

[8. The ordinary shares to be converted as aforesaid shall carry dividend as such down to (but excluding) the date of conversion, and shall rank for dividend as preference shares, and be entitled to the same rights and privileges and subject to the same conditions as the other preference shares in the capital of the company from and after (and including) that date.]

(d) *Variation.*

Variation.

[1. No member shall be entitled to sell or transfer any shares [either ordinary or preference] held by him unless he shall first have offered in writing to the directors to sell such shares at the price at which such member proposes to sell such shares, the name and address of the intending purchaser being at the same time specified.]

Variation.

[2. Such offer shall be irrevocable, and shall constitute the directors the agents of the offerer for the sale of such ordinary shares to any member holding ordinary shares, or of such

preference shares to any member holding preference or ordinary shares, in the company, including the directors personally, in accordance with the following procedure. Form No. 4.
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[3. The directors shall on receipt of the offer intimate in writing its terms to all the other members holding ordinary shares, or preference or ordinary shares, as the case may be, and such shareholders or any of them shall be entitled to apply for the shares offered within ten days thereafter at the price named in the offer, and such shares if over-applied for shall be divided in proportion to the number of ordinary shares, or preference or ordinary shares, as the case may be, held by each applicant, and if not over-applied for shall be divided according to the applications. Variation.

[4. The acceptance or refusal of the offer shall be intimated to the offerer within fourteen days after its receipt, and, if accepted, the offerer shall be bound to complete any sales so arranged by the directors; but if the whole or any of the shares are not applied for the member shall, subject to the other provisions of these Articles, be entitled to sell the shares not applied for at not less than the price named in the offer, provided always that such sale is effected within twenty days from the date of intimation to the member of the declinature or non-acceptance of the shares by the shareholders. Variation.

[5. No voluntary sale of shares, either preference or ordinary, shall be effectual without the assent in writing of the directors at a lower price than has been previously asked from the holders of ordinary shares, or preference or ordinary shares, as the case may be, and declined or not accepted by them. Variation.

[6. These Articles shall not apply to shares disposed of by *mortis causa* deed, and the trustees or direct legatees under such deed shall be entitled to be registered as members without any offer of the shares to the directors; [and these Articles shall also not apply to shares held by the said Variation. who shall be entitled to sell such shares during his lifetime or to transfer the same by *inter vivos* or *mortis causa* deed to his wife, children or next of kin.

or

6. Each shareholder shall be entitled to bequeath by testamentary writing any number not exceeding one-half of all the shares registered in his name to one or more of the members of his family, and in the event of his death his executors shall Variation.

Form No. 4. be entitled to be registered as holders of his shares upon producing such evidence of their title as may from time to time be required by the Directors, and thereafter such executors shall be entitled to transfer to the legatees, or to trustees on behalf of the legatees, the shares so bequeathed, and Articles hereof shall not apply to the shares so bequeathed. Such executors shall be bound within three months after the death of the shareholder to offer his remaining shares to the directors in accordance with Article , but if such shares are not accepted under that Article within one month after the offer they may be retained or sold by the executors at not less than the price stated in the offer.

Variation.

[7. Any shareholder in the employment of the company, [including directors,] on ceasing to be employed by the company, or in the event of the death of any shareholder, his executors and administrators, or in case of his insanity or bankruptcy, his curator or trustee, shall, if so required by the directors, be bound to sell his [preference shares and ordinary] shares in accordance with Article hereof, [but this Article shall only apply to the said or his sons in the event of the bankruptcy of any of them.]

Variation.

[8. The trustee [or any assignee] of any bankrupt [or insolvent] shareholder, and such bankrupt shareholder during his bankruptcy [or insolvency], shall not be entitled to exercise any of the rights of a member, but such trustee [or assignee] shall, subject to the provisions of these Articles, be bound to sell the shares of such bankrupt or insolvent member in the manner provided for under Article hereof.]

(e) *Variation.*

[COMPULSORY RETIREMENT OF EMPLOYEES.¹

Variation.

[1. Upon any member [other than a director or managing director] holding less in all than shares [whether preference

¹This is another form observed in practice. It will be seen that directors are by the bracketed portion exempted from its operation. The inclusion of directors within the scope of such Articles, and especially where providing for a cesser of membership, deserves serious consideration before resolving upon it in the case of any particular company. In any event, good faith must be observed by directors in the enforcement of retirement clauses and, particularly so, where the full market value of the shares held by a director or any member compulsorily retired is not being paid to him. *John Cotton*, 1919, 56 S.L.R. 625.

or ordinary] who is employed by the company in any capacity in which he receives a salary from the company, is dismissed from [or leaves] such employment it shall be in the option of the directors, at any time within [sixty] days after his dismissal, to resolve that such member agrees to sell his shares.¹

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[2. The directors shall not, however, have power to pass a resolution in terms of the preceding Article until they have obtained an offer from one or more of the remaining members to purchase the shares of the dismissed member at a price per share not less than the amount paid up thereon.

Variation.

[3. Said offer shall remain open till the expiry of the said [sixty] days, and shall be accompanied by cash for the price to be deposited in the hands of the directors.

Variation.

[4. Notice of such resolution, accompanied by such offer or offers, for the shares and tender of the cash by the directors, shall be given to the member affected thereby, and thereafter the member affected shall no longer be entitled to vote at or to attend meetings of the company.]

Variation.

FORFEITURE OF SHARES.

29. If any member fail to pay [any sum payable under the conditions of allotment or] any call or instalment on or before the day appointed for payment of the same, the directors [or managing director] may, at any time thereafter during such time as the [sum or] call or instalment remains unpaid, serve a

¹ The provision for compulsory retirement may be made to cover cases other than dismissed employees, *e.g.*, "members holding [two-thirds] of the issued share capital may serve upon the company at any time a demand for the transfer of any particular shares not held by such members, and thereupon the company shall give notice in writing of such demand (with a copy of this Article subjoined) and the member holding the shares so demanded shall be bound immediately thereafter on payment of the amount paid up by him on such shares [or the market value of such shares] to transfer such shares to any person whether a member of the company or not, whom the directors may nominate as the transferee of such shares, and failing his transferring such shares within seven days from the date of such demand, the directors shall be entitled to delete his name from the register of members and to substitute the name of the said transferee." See note to "Variations as to Transfer Right" in this Form, No. 4, p. 203. An alternative method is to omit Articles of this nature and to provide for the transference of the shares of employees on leaving their employment by special arrangements made with them individually in their service agreements, and this course has much to recommend it.

Form No. 4. notice on such member, requiring him to pay the same, together with any interest accruing to the date of payment, and all expenses that may have been incurred by the company, by reason of such non-payment.¹

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Company.

30. The notice shall name a day (not being less than fourteen clear days from the date of the notice), and a place or places on and at which such call or instalment, and such interest and expenses as aforesaid are to be paid, and shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares, in respect of which the [sum], call, or instalment is payable, will be liable to be forfeited.²

31. If the requisitions of such notice as aforesaid are not complied with, any shares in respect of which such notice has been given may at any time thereafter, before payment of all sums, calls, or instalments, interest, and expenses, due in respect thereof, be forfeited by a resolution of the directors [or managing director] to that effect, and such forfeiture shall include all dividends declared or payable in respect of the forfeited shares, and not actually paid before forfeiture.³

32. When any shares shall have been so forfeited, notice of the resolution shall be given to the member in whose name they stood prior to the forfeiture, and an entry of the forfeiture with the date thereof shall forthwith be made in the register, subject to the proviso that a forfeiture otherwise valid shall not be invalidated by reason of non-compliance with the terms hereof.

33. A statutory declaration in writing under the hand of [one] of the directors [or managing director] [or the secretary] that the call in respect of a share was made, that notice thereof was given, that default in payment of the call or instalment was made, and that the forfeiture of the share was made by resolution of the directors [or managing director] to that effect, shall be conclusive evidence of the facts therein stated as against all persons who would have been entitled to such share but for such forfeiture and such declaration.⁴

¹ See note to cognate Article 27 in Articles for Public Company—Form No. 2, p. 70.

² Cf. Article 25 of Table A. Articles 30, 34, 37 and 38 are useful but are frequently omitted.

³ Cf. Article 26 of Table A.

⁴ Cf. Article 29 of Table A.

34. Any shares so forfeited shall be deemed to be the property of the company, and the directors [*or* managing director] may re-allot, sell, or otherwise dispose of the same in such manner as they [*or* he] may think fit.¹

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35. The directors [*or* managing director] may at any time, before any share so forfeited shall have been sold, re-allotted either with moneys paid thereon by the former holder credited as paid up or not or otherwise disposed of, cancel the forfeiture thereof upon such terms and conditions, and either with or without any consideration or payment as they [*or* he] may think fit.

36. Upon any shares being forfeited, an entry shall forthwith be made in the register recording such forfeiture and the date thereof, and so soon as any shares so forfeited have been disposed of, an entry shall likewise be made therein of the manner and date of such disposal.

37. Any member whose shares have been forfeited shall, notwithstanding be liable to pay, and shall forthwith pay to the company all [sums] calls, instalments, interest, and expenses due upon, or in respect of such shares at the time of forfeiture, together with interest thereon from the time of forfeiture, until payment, at £ per cent. per annum, and the directors [*or* managing director] without being bound to do so, may enforce the payment thereof if they [*or* he] think fit.²

38. The forfeiture of a share shall involve the extinction, at the time of forfeiture, of all interest in, and also of all claims and demands against the company in respect of the share, and all other rights and liabilities incidental to the share, as between the shareholder whose share is forfeited and the company, except only such of those rights and liabilities as are expressly saved by these Articles or by the Act.³

39. Upon any sale being made by the directors [*or* managing director] of any shares to satisfy the claims of the company thereon, the net proceeds shall be applied—First, in payment of all

¹ Cf. Article 27 of Table A.

² Cf. Article 28 of Table A.

³ It is better to omit this Article. It conflicts with Article 35. Article 32 is sufficient for all purposes.

Form No. 4. costs of such sale; Second, in satisfaction of the debts or obligations of the member to the company; and *Lastly*, the residue (if any) shall be paid to the member or as he shall direct.

Private
Company.

SURRENDER OF SHARES.

40. The directors [*or the managing director*] may accept from any member on such terms and conditions as may be agreed, a surrender of his shares, or of any part thereof [by way of compromise of any question as to his liability to be registered in respect thereof or otherwise] provided that no part of the funds of the company shall form part of the consideration therefor, and the directors [*or the managing director*] may re-allot, sell, or otherwise dispose of any shares so surrendered as they [*or he*] may deem fit.¹

LIEN ON SHARES.

41. The company shall have a first and paramount lien upon all shares [not fully paid up] registered in the name of any member (whether solely or jointly with others) for his debts, liabilities, and obligations, liquid or illiquid, solely or jointly with any other person to or with the company, whether the period for payment or discharge thereof shall have actually arrived or not, and such lien shall extend to all dividends from time to time declared in respect of such shares, and unless otherwise stipulated by the directors [*or by the managing director*], the registration of a transfer of shares shall operate as a waiver of the company's lien (if any) on such shares.²

42. The directors [*or the managing director*] for the purpose of enforcing such lien may sell the shares subject thereto in such manner and upon such terms as they [*or he*] may think fit; but no sale shall be made until such period as aforesaid shall have arrived, and until notice in writing of the intention to sell shall have been served on such member, his executors or representatives, or his assignees [*or his trustee in bankruptcy*], and default shall have been made by him or them in payment or discharge

¹ See the fuller form of this Article in Articles for Public Company—Form No. 2, p. 73, and the notes upon surrender of shares there given.

² It is undesirable to include fully-paid shares within the scope of the lien clause, and it is also a bar to Stock Exchange quotations in the case of Public Companies. See cognate Article 39 in Articles for Public Company—Form No. 2, p. 74, and notes thereon.

of such debts, liabilities, or obligations, for fourteen clear days after such notice.¹

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43. The net proceeds of any sale [after deducting all costs as certified by the secretary of the company] shall be applied in and towards the discharge or satisfaction of such debts, liabilities, or obligations, and the residue, if any, shall be paid to such member, his executors, or representatives, or assignees, [or his trustee in bankruptcy].

44. Upon any sale for enforcing a lien in purported exercise of the powers hereinbefore given, the directors [*or* the managing director] may cause the name of the purchaser or of his nominee to be entered on the register in respect of the shares sold, and such register shall be conclusive evidence of the title of the person registered, and the remedy (if any) of any person aggrieved by the sale shall be in damages only, and against the company exclusively; and the purchaser shall not be bound to see to the regularity of the proceedings, or to the application of the purchase-money, and after his name has been entered on the register the validity of the sale shall not be impeachable by any person.²

ALTERATION OF CAPITAL.

45. The company may by special resolution [*or* extraordinary resolution] [subject to the consent of the directors [*or* the managing director]]

or

[45. The directors [*or* managing director] may from time to time, [with the sanction of a special resolution [*or* extraordinary resolution] of the company previously given in general meeting],

increase its capital by such sum, to be divided into shares of such amount, and to be issued on such terms and conditions

¹ *Cf.* cognate Article 40 in Articles for Public Company—Form No. 2, p. 75.

² It is convenient to insert an Article to the effect that an entry in the minute book or a statutory declaration by a director or by the secretary shall be good evidence of the sale of any shares subject to the lien of the company. Sometimes one Article of this nature is made to apply to the sale of forfeited shares also. See Article 29 of Table A, which prescribes that a director shall make the declaration in the case of forfeited shares. *Cf.* cognate Article 42 in Articles for Public Company—Form No. 2, p. 75.

Form No. 4. and [subject always to the proviso contained in section V. of the Memorandum of Association] with or without a right of preference whether in respect of dividend or of repayment of capital, or both, or with such deferred rights to the original or other shares of the company, as the company shall think expedient, [*or as the resolution shall prescribe or as the directors [or the managing director] shall determine*].¹

Private
Company.

46. Subject to any contrary direction by the resolution sanctioning [or increasing] the capital, all new shares [of any class] shall be offered to the members as nearly as possible [fractions being excluded] in proportion to the existing shares held by them [*or as to one-fifth thereof to the holders of preference shares in proportion to the existing preference shares held by them, and as to four-fifths thereof to the holders of ordinary shares in proportion to the existing ordinary shares held by them*], [except where a further issue is made in respect of the purchase of additional property and where such shares are issued as fully or partly paid in whole or part payment therefor]; and that at par or at a premium as the directors [*or the managing director*] may determine; and such offer shall be made by notice, specifying the number of shares to which each member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors [*or the managing director*] may dispose of the same in such manner as they [*or he*] may think most beneficial to the company.²

47. [Subject to the proviso contained in section V. of the Memorandum of Association], any capital raised by the creation of new shares (except in so far as the company, on the creation thereof, shall otherwise determine) shall be considered as part of the original capital, and shall be subject to the same provisions in these Articles with reference to the payment of

¹ See notes in regard to Alteration of Share Capital under Article 56 in Articles for Public Company—Form No. 2, p. 83. The alternative phrasing of this Article shews that an increase of capital may be resolved upon by the company or left to a resolution of the directors. See *Company Law and Practice*, p. 89.

² Cf. cognate Article 57 and notes thereon in Articles for Public Company—Form No. 2, p. 84, where alternative clauses are also given.

calls, the forfeiture of shares on non-payment of calls, lien and otherwise, as are provided with regard to the original capital.

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48. The company may from time to time, by special resolution, reduce its capital [in any manner allowed by law, and in particular by paying off capital or cancelling capital which has been lost or is unrepresented by available assets, reducing the liability on the shares, or returning capital upon the footing that it may be called up again or otherwise as may be expedient]; and the company may, by special resolution, subdivide [or by ordinary resolution] consolidate its shares or any of them.¹

or

[REDUCTION OF CAPITAL, &c.]

48. The company may [subject to Article hereof] at any time, by special resolution— Variation.

- (a) Consolidate and divide its capital [original, increased, or reduced] into shares of larger amount than its existing shares.²
- (b) Divide, by subdivision of its existing shares, or any of them, the whole or any part of its capital into shares of smaller amount than is fixed by the Memorandum of Association, subject, nevertheless to the provisions of the Act of 1908, and, upon a subdivision of shares, any preferential rights may be attached to one or more of the shares resulting from such subdivision as compared with the other shares so resulting.
- (c) Cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person.
- (d) Reduce its capital in any manner authorised by the Act of 1908].

¹ See notes as to reduction of share capital in Articles for Public Company—Form No. 2, under cognate Article 60 in that Form, p. 88.

² It has been suggested that sub-section (1) (b) of section 41 of the Act enables a company to increase its capital by creating shares of "larger amount" in excess of its existing share capital, but this construction is clearly inadmissible.

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49. [Subject to the proviso contained in section V. of the Memorandum of Association], the special resolution whereby any share is subdivided may determine that, as between the holders of the shares resulting from such subdivision, one or more of such shares shall have preferential rights over the others or other in respect of dividend, distribution of assets, voting or otherwise as the company shall deem expedient.

MODIFICATION OF RIGHTS.

50. In the event of the capital at any time being divided into different classes of shares, all or any of the rights or privileges belonging to the holders of each class of shares may [with the consent in writing of the holders of three-fourths of the issued shares of such class *or*] with the sanction of a [an extraordinary] resolution passed at a separate general meeting of the holders of shares of that class [present thereat in person or by proxy]. by a majority of not less than three-fourths of the votes given upon the resolution, but not otherwise, be affected, altered, varied, modified, abrogated, or dealt with in any manner; and to any such general meeting all the provisions of these Articles shall apply, but so that the necessary quorum shall be members of the class of shares proposed to be altered, affected, varied, modified, abrogated, or dealt with, holding or representing of the capital paid [or credited as paid] on the issued shares of such class, and such meeting for the purpose of this Article shall be convened and conducted in all respects as nearly as possible in the same way as an extraordinary general meeting of the company, [provided that no member (not being a director) shall be entitled to notice thereof, or to attend thereat, unless he be a holder of shares of the class intended to be affected by the resolution, and that no vote shall be given except in respect of shares of that class, and this Article shall not by implication curtail any power of modification or alteration which the company would have if this Article had not been inserted].¹

[CONVERSION OF PREFERENCE INTO ORDINARY SHARES, &c.²

Variation.

[1. 5000 preference shares to be issued and allotted to the said
in terms of the said agreement shall be

¹ See notes upon cognate Article 59 in Articles for Public Company—Form No. 2, p. 87.

² These Special Articles illustrate certain arrangements which may enter into the flotation of a Private Company.

numbered 1 to 5000, both inclusive, and of these, 2000 (numbered 1 to 2000, both inclusive), shall, upon the _____ day of _____, 1919, be deemed to be *ipso facto* converted into ordinary shares, ranking in all respects from and after that date *pari passu* with the other ordinary shares of the company issued for the time being.

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[2. At any time before the 1st day of July, 1919, the said _____ shall have the right as regards the remaining 3000 preference shares held by him, to elect to have the same or any of them converted into ordinary shares. Such election shall be declared by notice in writing to the company, signed by him, specifying the number of preference shares to be converted and the distinctive numbers thereof, and accompanied by the certificate relating to the same, and from and after the date of the receipt by the company of such notice the said preference shares shall be deemed to be converted accordingly as from said last-mentioned date, and shall thereafter confer the same rights and privileges and be subject to the same priorities as the other ordinary shares in the capital of the company.

[3. The said last-mentioned preference shares, if and when converted, shall rank for dividend as ordinary shares as from the commencement of the financial year in which such conversion shall take place, and any dividend paid on such preference shares subsequent to the commencement of the year, but before the date of conversion, shall be imputed as a payment to account of the ordinary share dividend on such shares for that year.

[4. Concurrently with the conversion of the said 2000 preference shares into ordinary shares, as and when such conversion shall take place, a like number of ordinary shares (forming part of the unissued ordinary capital of the company and bearing distinctive numbers immediately consecutive to the numbers of the issued ordinary shares) shall be deemed to be converted into preference shares, and shall thereafter form part of the unissued preference capital of the company, and confer the same rights and privileges and be entitled to the same priorities as the other preference shares in the capital of the company.

[5. The preference shares to be converted into ordinary shares as aforesaid shall, upon conversion, bear distinctive numbers immediately consecutive to the numbers of the issued ordinary

Form No. 4. capital of the company for the time being, and the ordinary shares to be converted into preference shares as aforesaid shall, upon conversion, bear the distinctive numbers formerly held by the preference shares which shall have been converted into ordinary shares.]

Private
Company.

BORROWING POWERS.

51. The directors [*or* managing director] may from time to time, at their [*or* his] discretion [but not until the preference capital to the extent of £ has been fully subscribed] borrow from themselves [*or* himself] or other persons, any sum or sums of money for the purposes of the company, provided that the moneys so borrowed and owing at any one time shall not (without the sanction [*of* the company in general meeting *or*] of a special [*or* extraordinary] resolution of the company) exceed [one {half}] of the nominal amount of the capital *or* of the subscribed capital *or*] in the aggregate the sum of £ , but no lender or other person dealing with the company shall have any duty to inquire or see whether this limit is [*or* the said conditions have been] observed.¹

52. The directors [*or* managing director] may raise or secure the repayment of such moneys in such manner and upon such terms and conditions in all respects as they [*or* he] think fit, and in particular by the creation and issue of debenture stock, or the issue of debentures or other obligations of the company; and in security of money so borrowed or raised may mortgage, pledge, or charge all or any part of the property, assets and rights of the company, including the uncalled capital, and may make and carry into effect any arrangements which they [*or* he] may consider expedient for securing the repayment of any money so borrowed or raised, and may convey any land or property of the company to trustees or otherwise, and may grant and execute all necessary deeds and writings for securing and completing such loans.¹

or

Variation.

[52. The directors [*or* managing director] may from time to time raise or borrow such moneys either without any specific security over the property of the company or any part thereof or upon specific security of the property of the company or any

¹ See cognate Articles 127 and 128 and relative notes in Articles for Public Company—Form No. 2, p. 136 *et seq.*

part thereof on bonds, bonds and dispositions in security, dispositions *ex facie* absolute or in trust, declarations in trust, or bonds of cash credit or on debentures, mortgages, debenture stock or mortgage debenture stock, and from any corporation or from any person whether a director or member of the company or not.]

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53. A certificate by two directors [*or the managing director*] that the amount of any loan or loans is within the limit of the borrowing powers of the company shall be conclusive evidence in any question between the lenders and the company.

54. In computing the amount from time to time borrowed, trade credits on purchases or trade advances from bankers, brokers, or others, or advances upon goods, bills, or other assets obtained in the ordinary course of business [*and the amount of any bonds taken over [or replaced] by the company*] shall not be included.

55. Every debenture or other deed issued by the company for securing the payment of money may be so framed that the moneys thereby secured shall be assignable free from any equities [*or from all latent claims*] between the company and the person to whom the same may be issued.¹

56. Any debentures, debenture stock, bonds, or other similar securities may be issued at a discount, premium, or otherwise, and with any special privileges as to redemption, surrender, drawings, [allotment of shares, appointment of directors, voting at general meetings of the company] or otherwise.

57. The directors [*or managing director*] shall cause a proper register to be kept, in accordance with section 100 of the Act of 1908, of all mortgages and charges specifically affecting the property of the company.²

MEETINGS OF SHAREHOLDERS AND PROCEEDINGS THEREAT.

58. The statutory meeting of the company shall, as required by section 65 of the Act of 1908, be held within a period of not less than one month or more than three months from the date of

¹ See cognate Article 129 and note thereon in Articles for Public Company—Form No. 2, p. 138.

² See cognate Article 134 in Articles for Public Company—Form No. 2, p. 139.

Form No. 4. the incorporation of the company, [and the directors [*or the*
Private managing director] shall comply with the provisions of section
Company. 65 of the Act of 1908 as to producing thereat a list of members
of the company].¹

59. Subsequent general meetings shall be held once in each year at such time and place as may be prescribed by the directors.²

60. The above-mentioned general meetings shall be called ordinary general meetings; all others shall be called extraordinary general meetings.

61. No business shall be transacted at an extraordinary general meeting except that for which it shall have been convened.

62. The Directors [*or managing director*] may, when they [*or he*] may think fit, and shall, on a requisition of the holders of not less than one-tenth of the issued capital of the company, upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company, and in the case of such requisition the following provisions shall have effect:—

- (1) The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the office, and may consist of several documents in like form, each signed by one or more of the requisitionists.
- (2) If within twenty-one days from the date of the requisition being so deposited, such meeting is not directed to be held the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not

¹ A private company is exempted by sub-section (6) of section 87 of the Act from the restrictions imposed by that section in regard to the commencement of business by companies. The period within which the statutory meeting must be held in the case of a private company runs therefore from the date of incorporation. The statutory report in the case of a private company does not require to be forwarded to the members or to be filed with the Registrar. See *Company Law and Practice*, p. 226.

² Cf. Article 64 in Articles for Public Company—Form No. 2, p. 90.

be held after three months from the date of such deposit. **Form No. 4.**

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(3) If at any such meeting any resolution is passed requiring confirmation at another meeting, such further extraordinary general meeting shall be forthwith convened for the purpose of considering the resolution, and if thought fit of confirming it as a special resolution; and if such meeting is not convened within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

(4) Any meeting convened under this clause by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by the directors [*or* managing director].¹

63. Seven clear days' notice at least, specifying the place, the day, and the hour of meeting, and in case of special business, the general nature of such business, shall be given to members in manner hereinafter provided; but the non-receipt of such notice by any member [*or* members, not exceeding one-tenth of the whole members entitled to vote at the meeting,] shall not invalidate the proceedings at any general meeting.²

¹ This Article may be shortened, as is frequently done in the case of a Private Company, by reference to section 66 of the Act of 1908, thus:—

“The directors [*or* managing director] may, whenever they [*or* he] may think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition or in default, may be convened by the requisitionists in accordance with section 66 of the Act of 1908, and in the event of there being no directors [*or* managing director] within the United Kingdom available for the purpose [*any director or*] any two members may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings fall to be convened under these Articles.”

See cognate Article 67 and relative notes in Articles for Public Company—Form No. 2, p. 91.

² If “clear days” is not defined in any Interpretation Article, it is usual after the word “least” to insert “exclusive of the day on which the notice is served but inclusive of the day for which the notice is given.” See Articles for Public Company, Form No. 2, and notes therein to cognate Article 68, p. 93.

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64. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, and the consideration of the accounts, balance sheets, and the ordinary report of the directors, appointing or re-electing directors and auditors, and fixing their remuneration, and any other business expressly authorised by these Articles to be done at the ordinary meeting.

65. No business, except the declaration of a dividend [or the adjournment of the meeting], shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business, and such quorum shall consist of at least [three] members present personally holding or representing by proxy not less than [] of the issued capital.¹

66. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved, and in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum is not present, those or any two members who are present shall be a quorum, and may transact the business for which the meeting was called.²

67. The chairman (if any) of the directors [or The managing director] shall preside as chairman at every general meeting of the company.

68. If there be no such chairman, or if at any meeting he [or If at any meeting the managing director] is not present within ten minutes after the time appointed for holding the meeting, or be unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

69. The chairman may, with consent of the meeting, adjourn any meeting from time to time, and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place, and unless there shall be an interval of

¹ See cognate Article 70 and relative note in Articles for Public Company—Form No. 2, p. 94.

² See cognate Article 71 and relative note in Articles for Public Company—Form No. 2, p. 95.

ten clear days, or more no notice of an adjourned meeting shall be necessary.¹

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70. Every motion [and question] submitted to a meeting shall be decided [in the first instance] by a show of hands, unless before or upon the declaration of the result of the show of hands a poll is directed by the chairman or is demanded [in writing] by [one or more] members present personally [or by proxy, and entitled to vote] [and holding [*fix proportion*] of the capital represented at the meeting] and, unless a poll be so directed or demanded, a declaration by the chairman that a resolution has been carried [or carried by a particular majority or lost or not carried by a particular majority], and an entry to that effect in the minute book of the company shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.²

71. If a poll is directed or demanded, it shall be taken in such manner, and at such time and place, and either at once or after an interval or adjournment not exceeding [seven] days thereafter, as the chairman directs; and the result of such poll shall be deemed to be the resolution of the company at the general meeting at which such poll was demanded.³

72. In case of an equality of votes at any general meeting, the chairman shall, both on a show of hands and at the poll, have a casting vote in addition to the vote or votes to which he may be entitled as a member.

73. For the purpose of passing a special resolution the two meetings may be convened by one and the same notice, and it shall be no objection to such notice that the second meeting is only convened contingently on the resolution being passed [by the requisite majority] at the first meeting.⁴

¹ See cognate Article 74 and relative note in Articles for Public Company—Form No. 2, p. 96.

² Cf. cognate Article 75 with alternative form in Articles for Public Company—Form No. 2, p. 96.

³ See cognate Article 76 and relative note in Articles for Public Company—Form No. 2, p. 97.

⁴ Some additional Articles are occasionally inserted, *e.g.*, as to the chairman finally determining all questions as to the admission of votes, other business proceeding while a poll is being taken, &c. Such Articles will be found in Form No. 2, for Public Companies not adopting Table A., p. 98. It is also frequent to insert an Article to the

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VOTES OF MEMBERS.

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74. On a show of hands every member shall have one vote only. In case of a poll every member shall have one vote for every share held by him.¹

75. Any tutor or curator of a minor member, and any curator of an insane member, and any person becoming entitled to shares in consequence of the death of any member, may, subject to the provisions of Articles 27 and 77, vote at any general meeting in respect thereof, in the same manner as if he were the registered holder of such shares, provided that forty-eight hours at least before the time of holding the meeting at which he proposes to vote he shall satisfy the directors [or the managing director] of his right to such shares, or the directors [or the managing director] shall have previously admitted his right to vote at such meeting in respect thereof.

76. When there are joint registered holders [including holders in any representative capacity] of any shares [or stock,] entitling the holders thereof to be present and to vote at any meeting, that one only of such holders, who has been nominated in writing or, failing such nomination, whose name stands first on the register, shall be entitled to vote in respect of such shares [or stock]; but any other of such holders may be authorised to attend and vote in respect thereof by proxy signed by the joint holders or by a quorum [or majority] of them; [and in the case of a firm or partnership holding shares, such partner thereof only shall be entitled to vote in respect of such shares as may be named in a notice signed by the firm or partnership and deposited at the office, subject to any other partner being appointed by proxy for the firm or partnership under Article 79.]²

effect that: "A resolution in writing, signed by or on behalf of all the members of a class, or all the members for the time being of the company, shall be as valid and effectual as if it had been passed at a meeting of the class or the company duly called and constituted, but this Article shall not apply to a resolution for winding up the company, or to a resolution passed in respect of any matter which by the Acts or these Articles ought to be dealt with by special resolution as defined by section 69 (2) of the Act of 1908." See Article 81—Form No. 2, p. 98.

¹See cognate Article 83 and relative note in Articles for Public Company—Form No. 2, p. 99.

²The bracketed portion as to a firm or partnership may be made the subject matter of a separate Article. See *Company Law and Practice*, p. 48.

77. No member [*or other person*] shall be entitled to be present **Form No. 4.** or to vote either personally or by proxy at any general meeting, Private Company. unless all the calls due by him at the time have been paid, and only in respect of shares duly registered in his name.¹

78. Votes may be given either personally or by proxy.

79. [The deed or document appointing any *or*] [Any] proxy shall be in writing under the hand of the appointer, or, if such appointer be a corporation, under the common seal of such corporation, [*or under the hand of any director, manager, secretary, or other officer thereof signing on its behalf*] [and need not be attested by any witness.] But no person shall be a proxy who is not a member qualified to vote, or an officer of a member corporation, or a partner of a firm or partnership which is a member.²

80. All proxies shall be in the following form, or in any other form of which the directors [*or the managing director*] may approve.

"THE , LIMITED.

I, , of , in the county of , being a member of the "The Limited," hereby appoint , of , or, failing him, , of , as proxy to vote for and on behalf at the ordinary (*or extraordinary, as the case may be*) general meeting of the company, to be held on the day of , and at any adjournment thereof.

As witness my hand this day of , in the year 1919.

[*or, Signed this day of , 1919.*³

[Witness."]

¹ See cognate Article 86 in Articles for Public Company—Form No. 2, p. 100.

² See cognate Article 88 and alternative forms with relative notes in Articles for Public Company—Form No. 2, p. 101.

³ See notes upon the simplification of the form of proxy under Article 89 for Public Company—Form No. 2, p. 103.

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81. [The deed or document appointing a [*or Any*] proxy shall be deposited at the office not less than forty-eight [*or twenty-four*] hours before the hour appointed for holding the meeting at which the person named in such writing proposes to vote, and no such writing shall be valid after the expiration of three months from the date of its execution, or after notice of its revocation shall have been given at the office by the member who may have given such proxy.¹

82. No vote or act given or done by a proxy shall be rendered invalid by the revocation of the appointment by death or otherwise unless notice in writing of such death or other revocation shall have been received at the office before the vote or act was given or done.²

83. No objection shall be made to the validity of any vote, except at the meeting at which such vote shall be tendered; and every vote, whether given personally or by proxy, not disallowed at such meeting, shall be deemed valid for all purposes whatever.²

[PREFERENCE SHARES.

Variation.

[. The preference shares shall not confer on the holders the right to attend or vote, either in person or by proxy at any general meeting, or to have notice of such meeting, unless it be the "statutory meeting" or a meeting called upon requisition as aforesaid, or unless the dividend on any of the preference shares is one month in arrear, or the meeting is convened for increasing or reducing the capital, or for winding-up, or sanctioning a sale or amalgamation of the business and assets of the company, or for altering these Articles, or where the proposition to be submitted to the meeting directly affects the rights and privileges of the holders of the preference shares; [but nevertheless, all preference shares of the company belonging beneficially to the said _____ and held by him, shall be entitled to and carry the rights, powers, and privileges disallowed by this Article to the other preference shares of the company.]]³

¹ Cf. Article 88 in Articles for Public Company—Form No. 2, p. 101.

² Cf. cognate Article 92 with relative note in Articles for Public Company—Form No. 2, p. 104.

³ In the case of private companies it is sometimes provided that the preference shares shall not carry the privilege of attending and voting at company meetings, and this proposed Article gives effect to such an arrangement. See notes to Article 83 in Articles for Public Company—Form No. 2, p. 99

DIRECTORS.

Form No. 4.

84. [Until otherwise determined by the company in general meeting the] *or* The number of directors shall not be less than [two] nor more than [five].

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or

[84. The first directors of the company shall be _____ and _____, all of the said _____, who (unless incurring any disqualification under these Articles) shall be entitled severally to be and remain directors [for their respective lives *or*] until the date of the ordinary general meeting of the company in the year [____], after which date, unless otherwise determined by special resolution of the company, they shall fall under the rules of rotation of directors hereinafter contained.¹

Variation.

or

[84. _____ shall be managing director, and he shall be one of the first directors, and shall be chairman of the directors so long as he retains the qualifying number of shares as provided by these Articles, and he may delegate to the directors the whole or so much of the powers conferred upon him by the Articles as he may think fit, or he may retain all such powers, and in that case the directors shall form an advisory consultative board merely, and such Board shall not be entitled to exercise any of the powers conferred upon the directors by the Memorandum of Association or by these Articles without the consent of the managing director.]

Variation.

85. The qualification of every director shall be the holding [in his own and beneficial and exclusive right] of _____ shares of the nominal value of £_____, and a director may act before acquiring his qualification, but shall in any case acquire his qualification within one month of his appointment as a director, provided that if he shall not have acquired such qualification within the said period, he shall be deemed to have agreed with the company to take from the company so many shares as shall be necessary to make up with the shares (if any) which he then

¹ Frequently arrangements are made in private companies whereby the founders or other persons mainly interested in their formation are made directors for life or for fixed periods of years, or are invested with extensive authority, and the variations of Article 84 in the Form are illustrative of such arrangements.

Form No. 4. holds the amount of his said qualification, and his name shall be entered in the register of members accordingly.¹

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86. The remuneration² of the directors shall be determined by the company in general meeting, and shall be divided among the directors as they themselves from time to time may determine.

87. If [the managing director or] any director shall be called on to go or reside abroad on the company's business, or otherwise perform extra services at home or abroad, or shall undertake any cautionary obligation or guarantee on behalf of the company, the company in general meeting may determine to give him special remuneration for such services, by way of payment of salary, commission, or a stated sum of money; and all travelling, hotel, or other expenses [in attending meetings of the directors] shall be repaid to the directors [or the managing director].³

88. The said _____ shall continue to be a director so long as he holds the necessary qualification as aforesaid, and he shall not be subject to retirement nor be taken into account in determining the rotation of retirement of directors, and other directors shall retire from office at the ordinary general meeting in the year following their appointment, and in every subsequent year one-third of the directors for the time being, except as aforesaid, or, if their number is not a multiple of

¹ See notes to Article 95 as to qualification of directors in Form No. 2 for Public Company, p. 105. Of course if all the shares are subscribed, it is obvious some arrangement would have to be made for a transfer of the necessary shares from some other member or the Articles if in the style of this Form would require to be altered to suit the circumstances.

² See notes on remuneration of directors under Article 96—Form No. 2 for Public Company, p. 106. In 1907 the then Chancellor of the Exchequer stated that an allowance in respect of earned income could only be granted upon dividends on shares in a private limited company held by a director or employee of such company where it is expressly provided by the Articles of Association that the right to receive such dividends is granted to him by way of remuneration for his services. *Hansard*, 177, p. 786. An Article in the following terms is accordingly sometimes inserted:—"The dividends and interim dividends paid on all shares held by any director, managing director, or employee of the company shall so long as he is holder of such shares and shall be director, managing director, or employee of the company respectively be deemed to form an additional part of the remuneration paid to them by the company for their respective services."

³ Cf. Article 97 in Article for Public Company—Form No. 2, p. 107.

three, then the nearest number to one-third shall retire from office. Form No. 4.

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Company.

89. Should any question arise as to the retirement by rotation of any director or directors, it shall be decided by the directors themselves, whose decision shall be final and binding on all concerned.

90. The company in general meeting may from time to time increase or reduce the number of directors, and may alter their qualifications and rotation, [but any such increase or reduction or alteration shall take place only with the written approval of the said .]¹

91. The company may by special [*or extraordinary*] resolution remove any director [other than the said], before the expiration of his period of office, and the company [by ordinary resolution] may appoint another qualified person in his stead, and the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.²

92. Any casual vacancy occurring among the directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.³

DISQUALIFICATION OF DIRECTORS.

93. The office of a director shall be vacated *ipso facto*—

- (a) If he becomes bankrupt or insolvent, or suspends payment, or compounds with his creditors.
- (b) If he is of unsound mind.
- (c) If he does not acquire the required amount of shares to qualify him for office within month after appointment [*or election*], or ceases to hold the same; and a person vacating office under this sub-

¹ *Cf.* Article 107 in Articles for Public Company—Form No. 2, p. 123.

² See Article 111 in Articles for Public Company—Form No. 2, p. 124.

³ *Cf.* Article 108 in Articles for Public Company—Form No. 2, p. 123.

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section shall be incapable of being reappointed [or re-elected] until he has obtained his qualification.

(d) If he shall absent himself [or be absent] from the meetings of the directors during a period of [] months, without special leave of absence from the directors duly minuted.

(e) If he is appointed to be an auditor.¹

94. No director [as such] shall be disqualified from, or vacate office by reason of his or any company or partnership of which he is a member contracting or having entered into contracts with the company, either as seller or otherwise, and no contract entered into by or on behalf of the company with any company or partnership of, or in which any director shall be a member or otherwise interested shall be reducible; and no director so contracting, or being employed by the company, or being such member or so interested shall be liable to account to the company for any profit realised by any such contract, by reason only of such director holding that office or of the fiduciary relation thereby created; and any director having such interest where it does not appear on the face of the contract, must disclose it prior to the resolution of the directors at their meeting for the conclusion thereof, if his interest then exists and is known to him, or in any other case, at the first meeting of the directors after the acquisition of his interest or of his knowledge thereof; and no director [except the said] shall as a director vote in respect of any contract in which he is so interested, and if he do vote his vote shall not be counted; [but this prohibition shall not apply to the agreement mentioned in Article [6] hereof, or to any matters arising thereout, or to any contract by or on behalf of the company to give to the directors, or any of them, any security by way of indemnity, and it may at any time or times be suspended or relaxed to any extent by a general meeting]; and a general notice that a director is a member of any specified firm, company or syndicate, and is to be regarded as interested in all transactions with that firm, company or syndicate, shall be a sufficient disclosure under this Article as regards such director and the said transactions; and it shall be unnecessary for such

¹ See Article 101 and relative note in Articles for Public Company—Form No. 2, p. 118.

director after such general notice to give specific notice of any particular transaction with that firm, company or syndicate.]¹

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POWERS OF DIRECTORS.

95. The management of the business of the company shall be vested in the directors [*or* managing director], and in addition to their [*or* his] express powers and authorities under these Articles they [*or* he] may exercise all such powers, and do all such acts as may be exercised or done by the company, in virtue of the Memorandum of Association or otherwise and are not by these Articles, or by the Acts, expressly directed or required to be exercised or done by the company in general meeting; but subject, nevertheless, to any directions from time to time made by the company in general meeting, provided that no direction shall invalidate any prior act of the directors [*or* managing director] which would have been valid if such direction had not been made.²

96. Without prejudice to the powers by law vested in directors [*or* the managing director] and to the general powers conferred upon them [*or* him] by the preceding Article, and to all other powers conferred by these Articles, the directors [*or* managing director] shall have the following powers:—

- (1) To [carry out the agreement mentioned in Article [6] [*or* in clause III., sub-clause () of the Memorandum of Association] and] pay any of the costs, charges, and expenses preliminary and incidental to the promotion, formation, establishment, and registration of the company.
- (2) To feu. exchange, hire, lease, apply for, or otherwise acquire for the company any property, rights, or privileges which the company is authorised to acquire at such price, and generally on such terms and conditions as they [*or* he] may think fit.

¹ See Article 102 and relative note in Articles for Public Company—Form No. 2, p. 120.

² This Article is very wide and in many cases may be deemed sufficient. It follows Article 71 of Table A. But some prefer to set out a series of particular powers in detail *e.g.*, as in the next Article. It seems unnecessary to do so where the Memorandum specifically recites similar powers. The Articles are nevertheless the appropriate document for their recital. The Memorandum by including powers in the "Objects" Clause misconceives the purpose of that Clause. See Article 98 and relative note in Articles for Public Company—Form No. 2, p. 108.

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- (3) To pay, at their [*or his*] discretion, for any rights acquired by, or services rendered to, the company, either wholly or partially in cash or in shares, bonds, debentures, mortgage debentures, debenture stock, or other securities of the company, and any such shares may be issued as fully paid up, or with such amount credited as paid up thereon as may be agreed upon; and any such bonds, debentures, mortgage debentures, debenture stock, or other securities, may be either specifically secured [*or charged*] upon all or any part of the property of the company and its uncalled capital, or not so secured [*or charged*].¹
- (4) To sell, feu, exchange, lease, hire out, dispose of, or deal with any of the property, real and personal, or rights or privileges of the company [*at home or abroad*] in the ordinary course of its business, in such manner, and upon such terms and conditions, and for cash or in consideration of shares, bonds, debentures, mortgage debentures, debenture stock, or other securities of any company having objects analogous to any of the company's objects, or otherwise as they [*or he*] may think fit, and they [*or he*] may acquire and hold shares in any such company.
- (5) To secure the fulfilment of any contracts or engagements entered into by the company, by mortgage or charge of all or any of the property of the company and its unpaid capital for the time being, or in such other manner as they [*or he*] may think fit.
- (6) To exercise from time to time, at their [*or his*] discretion the borrowing and other powers conferred upon them [*or him*] by Articles 51 to 57, both inclusive hereof.
- (7) To invest from time to time any portion of the moneys of the company not immediately required for the purposes of its business, in and upon such shares and securities and in such manner as they [*or he*] may see fit (but so that no moneys of the company shall be applied in the purchase of or by

¹ "Charged" is an English term.

way of loan upon its own shares), and vary such investments or realise the amount invested thereon.

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- (8) To appoint, and at their [*or his*] discretion remove or suspend, such managers, secretaries, solicitors, officers, clerks, agents, servants, and other officials for permanent, temporary, or special services as they [*or he*] from time to time may think fit: determine their duties and fix their salaries or emoluments, and require or dispense with security [*or a declaration of secrecy*] in such instances, and to such amount as they [*or he*] may think fit [and such managers and others may be appointed from the directors themselves, and in that event they shall be entitled to such salaries or remuneration as the directors may fix over and above their directors' fees.]
- (9) To appoint any person or persons to accept and hold in trust for the company any property belonging to the company, or in which it is interested, upon such terms as to remuneration as they [*or he*] may determine, and to execute and do all such deeds and things as may be requisite to vest the same in such person or persons, and to remove any person or persons so appointed.
- (10) To institute, conduct, defend, compromise, or abandon any legal proceedings, by and against the company or its officers or otherwise, concerning the company or its affairs, and compound and allow time for payment or satisfaction of any debts due, and of any claims or demands by or against the company.
- (11) To refer any claims or demands by or against the company to arbitration, and to implement and fulfil awards or decrees.
- (12) To grant and give receipts or other discharges for money payable to the company, and for the claims and demands of the company.
- (13) To act or to appoint any person or persons to act on behalf of the company in all matters relating to bankrupts and insolvents.

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- (14) To provide from time to time for the management of the affairs of the company abroad in such manner as they [or he] may think fit, and, in particular, to appoint any person to be the attorneys or agents of the company, with such powers (including power to sub-delegate), and upon such terms as may be thought fit.
- (15) To execute in the name and on behalf of the company in favour of themselves [or himself or] any director or other person or persons who may incur, or be about to incur any personal liability, for the benefit of the company, all agreements or obligations for his indemnity and such bonds and dispositions in security or mortgages upon or over the company's property [and including uncalled capital] and give him such remuneration, all as they [or he] may think fit; and any such deeds may contain a power of sale and such other powers and provisions as shall be agreed on.
- (16) To give to any director, officer, or other person employed by the company a commission on the profits of any particular business or transaction, or a share in the general profits of the company; and such commission, or share of profits, shall be treated as part of the working expenses of the company.
- (17) To set aside, before recommending any dividend, out of the profits of the company such sum as they [or he] may think proper for the redemption of debentures or obligations of the company, and for a reserve fund as hereinafter provided, and for such other purposes as they [or he] shall, in their [or his] absolute discretion, think conducive to the interests of the company; invest the several sums so set aside upon such investments, other than shares of the company, as they [or he] may think fit, or keep them invested in the general business of the company, without being bound to keep the same separate from the other assets; and from time to time deal with and vary such investments, and dispose of all or any part thereof for the

benefit of the company; and divide the reserve fund into such special funds as they [or he] may think fit. **Form No. 4.**
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Company.

- (18) To draw, accept, make, and endorse cheques, bills of exchange, promissory notes, and other negotiable instruments, on behalf and for the purposes of the company; [and to empower from time to time, if they [or he] may see fit, any one [of their own number] along with the secretary or other officer of the company to exercise such powers, and an excerpt from the minutes certified by [two] of their number [or by him] shall be sufficient evidence of such authority].
- (19) To enter into all such negotiations and contracts and rescind and vary all such contracts, and execute and do all such acts, deeds, and things in the name and on behalf of the company as they [or he] may consider expedient for, or in relation to, any of the matters aforesaid, or otherwise, for the purposes of the company, and to affix the seal to all contracts, deeds, and documents of the company in connection therewith.
- (20) To appoint a temporary substitute for the secretary, wherever they [or he] deem-s it expedient, [who shall, for the purposes of these Articles, be deemed to be the secretary].
- (21) To enter into any arrangement with any company, firm, or person carrying on any business similar to that of the company, for mutual concessions, or for any joint working or combination, or for any restriction upon competition, or for any pooling of business or profits that may seem desirable, and to carry the same into effect.
- (22) To give, award, or allow any bonus or other return or consideration to officials, employees, customers, constituents, or others connected with the company in respect of meritorious service rendered to or remunerative business provided for the company; to pay and provide any pension, gratuity or compensation to any employee of the company, or his widow or children, that may appear to them [or

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him] just or proper, whether such employee, his widow or children, have or have not a legal claim upon the company; and to contribute to any fund formed for any of these purposes.¹

MANAGING DIRECTORS.²

97. The directors may from time to time appoint one or more of their number to be managing director [or managing directors] of the company, either for a fixed term, or without any limitation as to the period for which he [or they] is or are to hold such office; dismiss or remove him [or them] from office, and appoint another or others in his [or their] place or places.³

98. A managing director shall, subject to the conditions of any contract between him and the company, be subject to the same provisions, as to vacation of his office [resignation and removal] as the other directors of the company; and if he cease to hold the office of director from any cause, he shall *ipso facto* and immediately cease to be a managing director; but while he continues to hold that office he shall not be subject to retirement by rotation and the rotation of the other directors shall be determined without regard to him.

99. The remuneration of a managing director shall, subject to the terms of any agreement in that behalf, from time to time be fixed by the directors [*or* by the company in general meeting] and may be by way of salary or commission, or participation in

¹ The particular order in which these and other powers are inserted in Articles is a matter for the discretion of the draughtsman. See notes to Article 99 in Articles for Public Company on special powers frequently conferred on directors—Form, No. 2, p. 109. Many of these powers are unnecessarily inserted.

² In many private companies the business may be under the practical control of a manager, and any provision for a managing director as distinct from a board of directors may be unnecessary. On the other hand, the managing director of a private company may be the only director, and the provisions with regard to him as may be adapted from this Form will supersede the consideration of these particular provisions. See notes under cognate Articles 123-126 for Public Company—Form No. 2, p. 128.

³ This Article seems to confine the power of dismissal to appointments made by the board and not to appointments made by the company in general meeting. This is a matter for adjustment.

profits, or by any or all of these modes, and that in addition to the directors' ordinary fees.¹

Form No. 4.

Private
Company.

100. The directors may from time to time entrust to, and confer upon a managing director, for the time being, such of the powers exercisable under these Articles by the directors as they may think fit [except the powers to borrow money and to make calls], and they may confer such powers for such time, for such objects and purposes, and upon such terms and conditions, and with such restrictions as they think expedient; and that either in conjunction with, to the exclusion of, or in substitution for all or any of the powers of the directors in that behalf; and they may, from time to time, revoke, withdraw, alter, or vary all or any of such powers.

MAJORITY SHAREHOLDER.

101. If at any time the majority of the issued shares of the company shall be held by any single member, such member shall be entitled to attend and participate in all meetings of the directors of the company, but unless he is a director he shall have no right to vote at such meetings; and due notice of all such meetings shall be given to such member, and he shall have access to and receive all information at any time in the possession of or available to the directors in regard to the business of the company.²

ROTATION OF DIRECTORS.

102. At the ordinary general meeting in the year 1919, [or The first directors shall continue in office until the annual general meeting in 1920 at which meeting] and at the ordinary general meeting in every subsequent year, [one or one-third or as may be arranged] of the directors shall retire from office, [but this Article shall not apply to a managing director with whom an agreement for a term of years may be made].

103. Any retiring director shall be eligible for re-election.

104. The company, at the general meeting at which a director retires in manner aforesaid, may fill up the vacated office by electing a person thereto.

¹ See Article 96 of Articles for Public Company, Form No. 2, p. 106.

² Where it is desired to retain control by the dominant member of a company, an Article on the lines of this Article is sometimes inserted.

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Private
Company.

105. If at any meeting at which an election of directors ought to take place, the place of any director is not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the place of the vacating directors is not filled up, the vacating director shall be deemed to have been re-elected at the adjourned meeting.¹

PROCEEDINGS OF DIRECTORS.²

106. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit, and determine the quorum necessary for the transaction of business. Until otherwise determined, [two] directors [*if there be more*] shall be a quorum of the board. Each director shall have one vote, and all questions arising at any meeting shall be decided by a majority of votes. In case of any equality of votes, the chairman shall have a second or casting vote. A director may, at any time, summon a meeting of the directors, and may instruct the secretary [*or secretaries*] to issue the necessary notices; [but no director shall be entitled to such notice in the event of his being at the time out of the United Kingdom].

107. The directors may elect a chairman [and deputy chairman] of their meetings, and determine the period for which they are to hold office [subject to the proviso, that so long as the said shall be a director and desires to hold the office of chairman he shall be entitled to be such chairman]: but if no such chairman [or deputy chairman] be elected, or if [neither] the chairman [nor the deputy chairman] be present at the time appointed for holding the meeting, the directors present shall choose some one of their number to be chairman at such meeting.

108. The directors may delegate any of their powers [except the powers to borrow money by the issue of debentures or debenture stock or by bond, mortgage or charge over or of the heritable property of the company or otherwise, and to make calls] to

¹ Cf. Article 106 in Articles for Public Company—Form No. 2, p. 123.

² Where the managing director of a private company is the only director, the series of provisions from Articles 102 to 112 will fall to be omitted.

committees, consisting of such members of their body as they think fit. Any committee so formed shall, in the exercise of the power so delegated, conform to any regulations that may be imposed on it by the directors. A copy of the resolution of the directors, signed by the chairman, shall be conclusive evidence of the due appointment of any such committee.¹

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Private
Company.

109. A committee may elect a chairman of their meetings. If no such chairman is elected, or if he is not present at the time appointed for holding any meeting, the members present may choose one of their number to be chairman of such meeting.

110. A committee may meet and adjourn as the members think proper. Questions arising at any meeting shall be determined by a majority of the votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

111. All acts done by any meeting of directors, or by a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they, or any of them, were disqualified, be as valid as if every such person had been duly appointed and was qualified.²

112. A resolution in writing, signed by all the directors, shall be as valid and effectual as if it had been passed at a meeting of directors duly convened and held.

MINUTES.

113. The directors shall cause minutes to be duly entered in books provided for the purpose—

- (a) Of all appointments of officers made by them.
- (b) Of the names of the directors present at each meeting of the directors, and of any committee of directors.
- (c) Of all orders made by directors and committees of directors.

¹ Cf. Article 119 of Articles for Public Company—Form No. 2, p. 126.

² Cf. Article 122 with relative note in Articles for Public Company—Form No. 2, p. 127.

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Private
Company.

- (d) Of all resolutions and proceedings of general meetings of the company, and of meetings of the directors and committees.

114. Every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose;¹ and all such minutes of meetings of the directors, or of any committee, or of the company, if purporting to be signed by the chairman of such meeting or by the chairman of the next succeeding meeting, shall be receivable as *prima facie* evidence of the matters stated in such minutes.

DIVIDENDS.

115. Subject to the rights of members entitled to shares issued upon special conditions, the [net] profits of the company made during the financial year or other period comprised in the accounts submitted to any ordinary general meeting of the company after setting aside such sums as may be considered expedient for reserves, and providing for depreciation, the writing down of goodwill and others in the discretion of the directors, [or the managing director] shall [after the payment of the dividend due on the preference shares] be divided among the holders of the ordinary shares [or the members] in proportion to the amounts paid up on the shares held by them [or the members] respectively, from the respective dates of payment.

or

Variation.

[115. The net profits of the company shall be applied as follows:—In payment (first) to the holders of preference shares of a cumulative preferential dividend at the rate of [£6] sterling per centum per annum on the amount paid up on such shares; (second) to the holders of ordinary shares of a dividend at the rate of [£10] sterling per centum per annum on the amount paid up on such shares; and (third) to all the members of the company according to the amount paid up on their respective shares of the balance (if any) by way of additional dividend.]

¹This gives effect to Article 75 of Table A, but in regard to private companies it is frequently omitted. Cf. Articles 174 and 175 in Articles for Public Company—Form No. 2, p. 162. Where the control of the company is in a managing director without any Board, these Articles may be omitted. It is desirable, however, in such a case to secure by the inclusion of such Articles the proper keeping of records of all important company business.

116. No larger dividend shall be declared than is recommended by the directors, [or by the managing director] [but the company in general meeting may declare a smaller dividend].¹

Form No. 4.

**Private
Company.**

117. No dividend shall be payable except out of the profits arising from the business of the company.²

118. The directors [or managing director] may from time to time pay to the members, on account of any forthcoming dividend, such interim dividend as in their [or his] judgment the profits of the company may justify. The time and place for payment of such dividend shall be fixed by the directors [or the managing director].

119. The directors [or managing director] may deduct from the dividends payable to any member all such sums of money as may be due by him to the company on account of calls or otherwise, and no member shall be entitled to claim any dividend in respect of shares, so long as any call or interest and expenses due in respect thereof remains unpaid.

120. Notice of any dividend [or bonus] that may have been declared shall be given to each member in manner provided by these Articles.³

121. The company shall not be responsible for the loss of any dividend warrant, cheque, or post office order, which shall be sent by post in respect of dividends, whether by request or otherwise.

122. No unpaid dividend [or bonus] shall bear interest as against the company.⁴

123. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend payable on the share.

¹ Cf. Article 137 in Articles for Public Company—Form No. 2, p. 141.

² See note to cognate Article 138 in Articles for Public Company—Form No. 2, p. 141.

³ See Interpretation Article as to “dividend.”

⁴ See Interpretation Article as to “dividend.”

Form No. 4.

RESERVE FUND.

Private
Company.

124. Such portion of the profits or revenue of the company, as the directors [*or managing director*] shall think fit, may be set apart as a reserve fund, to be applied at the discretion of the directors [*or managing director*] to any purpose to which such fund may be properly applied, and in particular and without prejudice to such generality for:—(1) equalising dividends or paying bonuses; (2) repairing and maintaining the property of the company and allowing for depreciation; (3) meeting any contingencies, or urgent payments, or any temporary or periodically recurring, or unforeseen, or casual expenses, necessities, or liabilities, or requirements of the company, its business or property; (4) liquidating gradually the debts of the company; (5) recouping capital previously expended, or as floating capital for carrying on the business of the company; (6) distributing amongst the holders of ordinary shares in proportion to the total amounts paid up upon their holdings of shares; or (7) any other purpose to which the profits or revenue of the company may be lawfully applied.¹

125. All moneys carried to the reserve fund, and all other moneys of the company not immediately applicable or required for any payment to be made by the company, may be either employed in the business of the company or be invested by the directors [*or managing director*] upon such securities (other than the purchase of or loan upon shares of the company) as the directors [*or managing director*] may from time to time think proper, with power to them [*or him*] from time to time to deal with and vary such investments, and also to divide such fund into special funds as they [*or he*] may think fit, and to dispose of all or any part of the said fund for the benefit of the company.²

ACCOUNTS.

126. The directors [*or managing director*] shall cause a true account to be kept of all sums of money received or expended by the company, and of the matters in respect of which such receipt or expenditure takes place, and of the credits [*or assets*] and liabilities of the company, and of all other matters necessary

¹ Cf. Article 148 in Articles for Public Company—Form No. 2, p. 146.

² See No. 4 of Miscellaneous Reserve Fund Articles in Form No. 2—Articles for Public Company, p. 152.

for showing the true state and condition of the company; and the accounts shall be kept in such books and in such manner and the books of accounts shall be kept at the office [or in such place or places of security] as the directors [or managing director] think fit [and the directors shall also cause all such books to be kept as may be required by the Act of 1908 or as may be deemed expedient].

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Private
Company.

127. All costs, charges, or expenses incurred or sustained in or about the establishment of the company which the directors [or managing director] may consider preliminary may be placed to a separate account, to be called "Preliminary Expenses Account," and shall be charged against the capital or profits of the company, and in such way or manner as the directors [or managing director] may think fit.

128. The directors [or managing director] shall from time to time determine [by resolution] whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company, or any of them, shall be open to the inspection of members; and no member shall have any right of inspecting any account or book or document of the company except as conferred by the Act of 1908 or authorised by the directors [or managing director] or by a resolution of the company in general meeting.¹

129. At every ordinary general meeting the directors [or managing director] shall lay before the meeting a statement of the accounts and balance sheet of the company, made up to a date not more than three months before the meeting, such statement commencing from the time when the last preceding statement was made up, or, in the case of the first statement, from the commencement of the company; and every such statement shall be accompanied by a report by the directors [or managing director] as to the state and condition of the company, and as to the amount (if any) which they [or he] recommend-s to be paid out of the profits by way of dividend to the shareholders, and of the amount (if any) which they [or he] propose-s to carry to the reserve fund.²

¹ See cognate Article 151 in Articles for Public Company—Form No. 2, p. 154.

² Cf. cognate Article 152 with relative notes in Articles for Public Company—Form No. 2, p. 154.

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Private
Company.

130. A copy of the balance sheet and of the report of the [or managing] director-s shall, at least seven days previous to such meeting, be sent free of charge to every member entitled to receive notices of general meetings [or shall for seven days previously to the meeting be kept at the office open for the inspection only of members.]¹

AUDIT.²

131. Once at least in every year the accounts of the company shall be examined, and the correctness of the balance sheet ascertained by one or more [professional accountants as] auditor or auditors.

132. The first auditors shall be appointed by the directors [or managing director], and shall hold office until the second ordinary general meeting (being the first ordinary meeting after the statutory meeting), unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at such meeting may appoint auditors. Subsequent auditors shall be appointed by the company at each ordinary general meeting, and shall hold office until the next ordinary general meeting.

133. The directors [or managing director] may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.³

134. If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.⁴

¹ Cf. cognate Article 153 with relative note in Articles for Public Company—Form No. 2, p. 155. It is usual to provide for the non-circulation of the balance sheet and report. See Articles for Private Company—Form No. 5, p. 256.

² Where it is desired to shorten the Articles, the specific provisions here made with regard to audit may be omitted and the following Article substituted:—

“[131. Auditors shall be appointed and their duties regulated in accordance with sections 112 and 113 of the Act of 1908, or any statutory modification thereof in force for the time being.]” See Articles 154 to 164 and relative notes in Articles for Public Company—Form No. 2, p. 156.

³ See Article 157 of Articles for Public Company—Form No. 2, p. 157 and relative note.

⁴ See Article 158 of Articles for Public Company—Form No. 2, p. 157 and relative note.

135. The auditors may be shareholders of the company, but no director or other officer of the company shall be eligible during his continuance in office.¹

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Private
Company.

136. Retiring auditors shall be eligible for re-election.²

137. A person other than a retiring auditor shall not be capable of being appointed auditor at an annual general meeting, unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders in the mode allowed by the Articles not less than seven days before the annual general meeting; provided that if, after a notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this Article, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this Article, be sent or given at the same time as the notice of the annual general meeting.³

138. The remuneration of the first auditors and of any auditor appointed to fill any vacancy shall be fixed by the directors [*or managing director*]; and the remuneration of subsequent auditors shall be fixed, and may, from time to time, be varied by the company in general meeting.⁴

139. The auditors of the company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors [*or managing director*] and officers of the company such information and explanations as may be necessary for the perform-

¹ See Article 159 of Articles for Public Company—Form No. 2, p. 157 and relative note.

² See Article 160 of Articles for Public Company—Form No. 2, p. 157 and relative note.

³ See Article 161 of Articles for Public Company—Form No. 2, p. 157 and relative note.

⁴ See Article 162 of Articles for Public Company—Form No. 2, p. 157 and relative note.

Form No. 4.Private
Company.

ance of the duties of auditors; and the auditors shall make a report to the shareholders on the accounts examined by them and on every balance sheet laid before the company in general meeting, stating whether or not they have obtained all the information and explanations they have required and whether, in their opinion, the balance sheet referred to in their report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company; and such report (which shall be attached to the balance sheet or referred to by a note at the foot thereof) shall be read before the company in general meeting and shall be open to inspection by any member.¹

140. Every balance sheet, when audited and approved by a general meeting, shall be conclusive, except as regards any error discovered therein within three months next after approval thereof; and whenever any such error is discovered within that period, the balance sheet shall forthwith be corrected, and thenceforth shall be conclusive.

NOTICES.

141. All notices and other documents requiring to be served by the company upon members may be served either personally or by leaving the same for, or sending them through the post in a prepaid letter [envelope or wrapper] addressed to them at their respective registered addresses in the United Kingdom; [and every notice sent through the post shall be deemed to have been served at the time when the letter containing the same is put into the post office].²

142. The office of the company, in the case of any member whose registered place of abode is outwith the United Kingdom, shall, as regards the service of notices or other documents, be deemed to be his registered place of abode in the United Kingdom; but any such member may register any place in the

¹See Article 163 of Articles for Public Company—Form No. 2, p. 157 and relative note.

²See cognate Articles 68 and 165 in Articles for Public Company—Form No. 2, pp. 93 and 158 and notes thereon. If the bracketed portion is retained, Article 146 of this Form will be omitted or restricted to the certificate of service.

United Kingdom, at which he desires such notice to be given, Form No. 4. and the same shall be given accordingly.¹

Private
Company.

143. All notices to be given on the part of members shall be left at, or sent through the post to, the office of the company [or to any officer of the company at such office on its behalf].

144. Every person who, by transfer, transmission, or other means, shall become entitled to any share, shall be bound by [and deemed to have knowledge of] these Articles, and every notice [or other document] which, previous to his name and address being entered on the register in respect of the share, is given to the person from whom he derives his title [or to the previous holder thereof].²

145. When any notice or document is delivered or sent in accordance with these Articles at or to the registered place of abode of a member, then, notwithstanding his decease, and whether or not the company have notice of his decease, such service of the notice or other document shall, for all the purposes of these Articles be deemed service thereof on each and all of his heirs, executors, and representatives [and if such member be the first-named in the register of two or more joint-holders also on all such joint-holders].³

146. Any notice served by post shall be deemed to have been served on the day following that on which the same was posted, and a certificate by the secretary or other officer serving such notice specifying the date of service and certifying that it was duly served shall be sufficient evidence of such service.⁴

SECRECY.⁵

147. Members by themselves or in general or other meeting of the company shall not be entitled to require discovery of, or any

¹ See Article 166 in Articles for Public Company—Form No. 2, p. 159.

² Cf. Article 169 in Articles for Public Company—Form No. 2, p. 161.

³ See Article 169 in Articles for Public Company—Form No. 2, p. 161.

⁴ See Article 167 in Articles for Public Company—Form No. 2, p. 160 and notes thereon.

⁵ This Article should not be inserted except in the case of manufacturing companies with secret processes or of companies possessing some substantial reason for its inclusion. See note to this Article in Form No. 2 for Public Companies, p. 153.

Form No. 4. information respecting, any details of the trading of the company, or any matter which may be, or be in the nature of, a trade secret or mystery of trade, or which may relate to the conduct of the business of the company, and which in the opinion of the directors [or the managing director] it will not be expedient in the interest of the members to communicate to the public; and no member shall have the right, without the express sanction in that behalf of the directors, to be in or upon any part of the working premises of the company, or to see any of the working books or documents of the company, or to interfere in any respect with the details of the management and conduct of the business of the company.

WINDING UP.

148. In the event of the company being wound up [whether voluntarily or otherwise], the assets available for distribution among the members shall belong to and be divided among the members in proportion to the amounts paid up [or credited as paid up] on their shares respectively at the date of winding up; [and if such assets shall be insufficient to repay the whole of the paid-up capital, such assets shall be distributed so that, as nearly as may be, the losses shall be borne by the members in proportion to the capital paid up, or which ought to have been paid up, on the shares held by them respectively at the commencement of the winding up; but this Article shall be without prejudice to the rights of the holders of shares issued under special conditions, and to preference shares having priority over the ordinary shares.¹

149: In any winding up the liquidators may, with the sanction of an extraordinary resolution, divide among the contributories in specie any part of the assets of the company, [and in particular any shares, debentures or debenture stock, or other securities held by the company in any other company], and may, with the like sanction, vest any part of the assets of the company in trustees upon such trusts for the benefit of the members as the liquidators with the like sanction shall think fit, [and, if thought expedient, any such division may be otherwise than in accordance with the legal rights of the contributories;

¹ Where there are different classes of shares, *e.g.*, preference shares, this Article can be varied on the basis of the cognate Article 182 and relative note given in Form No. 2 for Public Companies, p. 167.

and in particular any class of contributories may be given preferential or special rights or may be excluded altogether or in part; but, in case any division otherwise than in accordance with the legal rights of the contributories shall be determined on, any contributory who would be prejudiced thereby shall have a right to dissent with all ancillary rights as if such determination were passed by special resolution pursuant to section 192 of the Act of 1908; and if any shares forming part of the said assets and being divided as aforesaid involve any liability to calls or otherwise, any person entitled under such division to any such shares may, within ten days after the passing of the extraordinary resolution, by notice in writing, direct the liquidators to sell his proportion, and pay him the net proceeds; and the liquidators shall, if practicable, act accordingly.]¹

Form No. 4.

Private
Company.

NAMES, DESCRIPTIONS, AND ADDRESSES OF SUBSCRIBERS.

THO. R. STRAIN, Mechanical Engineer, 39 St. Andrew's Hill, Dundee.

HENRY HAWK, Civil Engineer, 42 Broadford Crescent, Hawick.

Dated the 15th day of June, 1919.

Witness to the above signatures—

H. STEVENSON,

*Writer,*169 Grove Terrace, Glasgow.

¹See note to cognate Article 183 in Form No. 2 for Public Companies, p. 168, and reference is also made to the Miscellaneous Winding-up Articles there given.

Note.—The descriptions in the statutory form of the Memorandum follow the English mode of placing the description or designation of a subscriber after his address, but the Scottish style as here given is frequently adopted in Scotland.

ARTICLES OF ASSOCIATION.

IV.—PRIVATE COMPANY LIMITED BY SHARES.

TABLE A ADOPTED WITH VARIATIONS OR EXPRESSLY INCORPORATED.

Forms Nos. 5, 6 and 7.

GENERAL NOTES.

Table A ;
adoption.

THE Editor refers to the General Notes applicable to similar Articles for Public Companies. The observations made with regard to Form No. 4 generally apply to Private Companies adopting the style of independent Articles in place of a reference to Table A with or without modifications. But, of course, in the case of Private Companies, provision must be made for limitation and restriction in regard to membership and transfers respectively and to prohibition of public subscription of their share capital in terms of section 121 of the Companies (Consolidation) Act, 1908, as amended by the Companies Act, 1913. Form No. 5 gives a set of Articles frequently adopted by Private Companies. Articles 35 to 40 deal with share warrants and must necessarily be excluded. It is almost invariable to find in addition that Articles 5, 68, 69, 70 and 77 of Table A are excepted, and frequently Articles 31 to 34, both inclusive, 48, 49, 51, 56, 78 to 86, both inclusive, 108, and 110 to 114, both inclusive, are also omitted in consequence of their inclusion not being desired, *e.g.*, Nos. 31 to 34, dealing with conversion of shares into stock, or of Articles upon the same lines with modifications being substituted. The draughtsman should satisfy himself, on the one hand, that he does not include, as is occasionally done, Articles from Table A, subjecting them to no modification, and thus merely repeating the same Articles purposelessly, and, on the other hand, that he excludes Articles of Table A where he has in fact substituted other Articles dealing with the same subject matter.

Table A ;
application.

Form No. 5 is somewhat elaborate. It is not necessary that there should be so much detailed regulation. Form No. 6 supplies a very brief code of Articles for Private Companies. The Editor recommends its adoption. The modifications upon Table A in this form are very

slight. Many companies have adopted it. It is open to the criticism, to which all forms of Articles partially adopting Table A are subject, in that it renders frequent reference to Table A, which is, as a rule, not printed as an appendix. This objection is avoided when Table A is printed as an appendix with the sections printed in italics, which do not apply to the particular company. The Editor suggests, however, that it is preferable to frame a set of Articles upon the basis of Table A with the necessary alterations indicated by Form No. 6. Form No. 7 giving effect to this suggestion has the merit of incorporating Table A in all its essentials *plus* Articles complying with the statutory requirements of Private Companies. Table A while excluded in point of form is thus set up so far as applicable to Private Companies in a style (where the cost of printing is not material) equally convenient to the merchant as to the lawyer. This Form No. 7 lends itself to easy revision by way of any variations deemed more suitable for any particular company while conforming in the main to Table A. Form No. 7 appears to be a useful and safe style for the adoption of practitioners. In the judgment of the Editor, it is preferable to the style which attaches the Government print of Table A to Articles prefixed determining *seriatim* the manner in which any of the Articles of Table A is wholly excluded or is modified. The chairman of meetings, whether of shareholders or of directors, should be able to find every regulation of the company in this complete code of Articles before him, and so with the members of the company and all others interested. The method therefore of adapting Table A, as in Form No. 7, to Private Companies has the advantage of rendering it unnecessary to appeal to Table A as a separate record. The sections of Table A dealing with the conversion of shares into stock and the issue of share warrants are and should be omitted. See *Company Law and Practice*, p. 225. Upon conversion of Private Companies into Public Companies, the Articles can be altered by special resolution to include them. Form No. 7, following Table A, includes no winding up Articles. It is for the practitioner to settle his draft in this and other matters according to the circumstances of the particular company. In the absence of special Articles as to liquidation, the general directions of the Act will operate.

General
Notes.

Articles of
Association :
Private
Company.

ARTICLES OF ASSOCIATION
OF
PRIVATE COMPANY LIMITED BY SHARES
ADOPTING TABLE A WITH VARIATIONS.

Form No. 5.

THE COMPANIES ACTS, 1908 TO 1917.

PRIVATE COMPANY LIMITED BY SHARES.¹

ARTICLES OF ASSOCIATION

OF

LIMITED.

CONSTITUTION [*or* CONSTITUTIONAL, *or* FUNDAMENTAL.]

1. The company [*or* _____, Limited] is formed [*or* established] as a private company in the sense [*or* within the meaning of section 121] of The Companies (Consolidation) Act, 1908, and, subject to the provisions of its Memorandum of Association, and to the provisions of these Articles of Association, consisting of the regulations in Table A in the First Schedule to the said Act, with the exception of Articles 5, 35 to 40, both inclusive, 68 and 69 thereof, and as modified by [*or* subject to] the following additional Articles.²

¹ It is useful in framing Articles on the basis of this Form to compare it with Articles for Private Company, Form No. 4, and it can be amplified wherever this is desired by Articles dealing, *e.g.*, with the office or seal of the company.

² See General Notes to Forms Nos. 5, 6, and 7 in reference to the Articles of Table A stated as excluded. If, for example, an Interpretation Clause is added, then Article 1 of Table A will fall to be excepted. For an Interpretation Article, see Article 5 of Articles for Private Company—Form No. 4, p. 191.

2. The number of members of the company (exclusive of persons who are in the employment of the company, and of persons, who having been formerly in the employment of the company, were while in such employment and have continued after the determination of such employment to be members of the company), shall be limited to fifty, and no transfer which would, if registered, increase such number of members beyond fifty (exclusive as aforesaid) shall be valid; and the directors shall refuse to recognise or register any transfer which would so increase such number; and subject to the proviso that two or more persons holding one or more shares jointly shall be regarded as a single member.¹

Form No. 5.
Private
Company.

3. No invitation to the public to subscribe for any shares or debentures or debenture stock of the company shall be made by the company or its directors or other officials or agents, and such directors or other officials or agents are hereby prohibited from making any such invitation.²

BUSINESS.

4. The business of the company shall include the several objects mentioned in or within the scope of the Memorandum of Association and all incidental matters, and the company may commence business upon its incorporation, although only part of its capital may have been applied for, allotted or issued.³

or

[4. The managing director is authorised to accept on behalf of the company a proposal for the sale to the company as a going concern of the business and assets of ;
Wholesale Merchants and Agents, Edinburgh [under burden of the whole liabilities and obligations connected therewith.]⁴

Variation.

¹ The Companies Act, 1913, amended section 121 of the Act. See Note to Article 2 of Articles for Private Company—Form No. 4, p. 190.

² Cf. Article 3 in Articles for Private Company—Form No. 4, p. 191.

³ See note to Article 58 in Articles for Private Company—Form No. 4, p. 223.

⁴ See cognate Article 6 in Articles for Private Company—Form No. 4, p. 194, and note thereon. The bracketed part illustrates a common form of Article under this heading. It can be made a separate Article. The reference therein to "the liabilities," &c., depends upon the terms of the promotion agreement, and as put involves additional stamp duty avoidable by other arrangements between seller and purchaser.

Form No. 5.

SHARE CAPITAL AND SHARES.¹Private
Company.

5. The capital shall be [£3000] sterling, divided into [3000] shares of £1 each and save as provided by any agreement the shares shall be issued and allotted by the directors to such persons on such terms and conditions, and either at a premium or at par and at such times, as the directors think fit, and in particular the directors may by agreement give to any person the right or option of requiring at a future date that an allotment shall be made to him of any shares at par or at such premium as may be agreed [and the expenses incurred in the formation and registration of the company shall be a first charge on the funds of the company].²

or

Variation.

[5. The capital of the company shall be [£ sterling, divided into preference shares of £ each and ordinary shares of £ each and such preference shares shall bear a cumulative preferential dividend at the rate of £ per centum per annum, and as regards repayment both of capital and dividend shall have priority over the ordinary shares. [All shares shall be issued and allotted by the chairman and the managing director, [or by the managing director with the written consent of the chairman]; and the chairman or the managing director may allot or issue fully or partly paid-up shares in the company as payment or part payment of any property, business, or rights acquired from, or for services rendered or to be rendered to the company by any person, including the chairman and the managing director.]

or

Variation.

[5. The shares forming the capital of the company shall, subject to [any agreement *or* to the agreement mentioned in Article hereof *or*] any resolution to the contrary passed by the company in general meeting before the issue thereof be under the control of the directors and they may in their sole discretion allot and dispose of such shares to such persons and on such terms and conditions as they deem right].

¹ The Articles dealing with this subject depend so much on the terms of formation agreements that they are infinite in their variety. See cognate Articles in Form No. 2 for Public Company, p. 56, Form No. 3 for Public Company, p. 174, and Form No. 4 for Private Company, p. 197.

² See Article 71 of Table A in regard to the payment of formation expenses.

[OPTIONAL ARTICLES.]

Form No. 5.

Private
Company.

[1. The certificate of title to shares shall be issued within two months after allotment or registration of transfer of such shares (unless the conditions of issue otherwise provide) under the seal, and signed by [one] director, and countersigned by the secretary or some other person appointed by the Board.¹

2. Any one of two or more persons registered as joint holders of any shares, and nominated in writing by all of them [*or by a quorum or a majority of them*] from time to time, or in default of such nomination the person first named on the register in respect of such shares shall, as regards voting, receipt of dividend, service of notices, and all and any other matters connected with the company, except the transfer of shares, be deemed the sole owner.

3. No person shall exercise any rights or privileges of a member until he shall have been registered in the register and all calls and other moneys due for the time being on every share held by him shall have been paid.

4. Every person who has accepted or who may accept any share or shares, and whose name is entered in the register, and no other person, shall be deemed to be a member, and the directors may decline to receive notice of any trust, express, implied, or constructive, or to permit it to be entered in the register or received by the company.

5. The directors may give the call of any unissued shares, and may confer any special or preferential right to the allotment of shares at such price and for such period and subject to such conditions as they may think fit.

6. The capital paid up on the said preference shares shall not be liable to reduction in respect of loss or depreciation until all the capital paid up or held as paid up on the ordinary shares shall have been reduced in respect thereof.

7. On any return of capital to the shareholders, whether under a winding up of the company or otherwise, no payment shall be

¹ Section 92 of the Act prescribes the limit of two months and see Article 6 of Table A.

Form No. 5. made in respect of the ordinary shares in the company until there shall have been paid to the holders of the said preference shares the amount paid up on the said shares held by them respectively, together with all arrears of dividend thereon, whether declared or not. After such payments shall have been made, the holders of the preference shares shall not be entitled in respect thereof to participate further in the surplus assets or remaining capital of the company, all of which shall belong to and shall be distributed amongst the holders of the ordinary shares in the company.¹

Private
Company.

8. The preference shares shall not confer on the holders the right to attend or vote either in person or by proxy at any general meeting, or to have notice of such meeting, unless the dividend thereon is, and so long as it is, in arrear for more than three months, or unless the meeting is convened for reducing the capital or winding up or sanctioning a sale of the business and assets of the company or altering these articles, or where the proposition to be submitted to the meeting directly affects the rights and privileges of the holders.]¹

LIEN.

6. The lien of the company under Article 9 of Table A shall also attach to fully paid shares, and to all shares registered in the name of any person indebted or under liability to the company, whether he shall be the sole registered holder thereof or shall be one of several joint holders, [but the registration of any transfer of shares shall operate as a waiver of any lien by the company upon such shares].²

7. An entry in the minute book of the company [or A statutory declaration by the secretary of the company] that any

¹ These Articles purport to qualify the rights of preference shareholders by conferring certain privileges and withholding others, but, of course, the company can alter the Articles by special resolution, and the only protection the preference shareholders can have is to be found in Article 4 of Table A. It is otherwise where preference shareholders obtain absolute rights or privileges under the Memorandum of Association. See General Notes to Memorandum of Association—Form No. 1, p. 4.

² See Article 39 and relative note in Articles for Public Company, Form No. 2, p. 74, and cf. Article 41 in Articles for Private Company, Form No. 4, p. 216.

shares have been sold to satisfy a lien of the company, shall be sufficient evidence, as against all persons entitled to such shares, that the said shares were properly sold; and such entry [*or* such declaration], and the receipt of the company for the price of such shares, shall constitute a good title to such shares, and the name of the purchaser shall be entered in the register as a member of the company, and he shall be entitled to a certificate of title to the shares, and shall not be bound to see to the application of the purchase money, and the remedy (if any) of the former holder of such shares, and of any person claiming under or through him, shall be against the company and in damages only.¹

Form No. 5.

Private
Company.CALLS ON SHARES.²

[The directors from time to time may make calls either in one sum or by two or more instalments upon members in respect of all moneys unpaid on their shares, provided that twenty-one days' notice be given of each call, and every member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed, but unless otherwise expressly provided by the conditions of allotment no call shall exceed [one-fourth] of the nominal amount of the share in respect of which it is made, nor be made payable within less than [two] months of the date on which the last preceding call was payable.]

Variation.

TRANSFER AND TRANSMISSION OF SHARES.

8. Notwithstanding the terms of Article 20 of Table A, the directors may decline to register a transfer of any share without assigning any reason therefor.³

or

[8. All transfers of shares of the company shall be subject to the approval and sanction of the board of directors, and the

Variation.

¹ See Article 42 in Articles for Public Company, Form No. 2, p. 75.

² Articles 12 to 17 of Table A ought in the general case to be sufficient, but if Article 12 is excluded then the bracketed Article may be adopted. Article 17 is sometimes altered so as to insert after the words "per cent." the words "per annum." They are plainly implied.

³ Article 20 of Table A excepts fully paid shares. It is desirable in many cases to keep control on the *personnel* as regards all the shares, and Article 20 is frequently altered in the manner suggested. For the purpose of compliance with section 121 of the Act, the restrictions upon transfer must affect all the shares: hence the necessity for modification of Article 20 of Table A.

Form No. 5. board may refuse to recognise or register any transfer without assigning any reason for such refusal.]
Private Company.

or

Variation.

[8. The directors may, in their absolute and uncontrolled discretion and without assigning any reason therefor, refuse to register any transfer of shares; suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year; decline to recognise any [deed of] transfer unless (a) a fee not exceeding 2s. 6d. is paid to the company in respect thereof, and (b) the [deed of] transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.]¹

9. Any member may transfer all or any of his shares to another member of the company, and subject to the provisions of Article 8 hereof, and to the constitution of the company as a private company, and to compliance with the provisions of Article 10 hereof, he may sell and transfer his shares to any person other than a member.²

10. Failing a member transferring his shares to another member, or in the event of his electing at once to offer his shares to the directors, a transfer of shares shall be arranged in the following manner:—

(a) The transferring member shall first, in writing, offer the shares (hereinafter called the “offered shares”) to the directors for purchase by the nominee or nominees of the directors, either at the price specified in the said offer, or in the option of the directors, at the fair value as hereinafter defined.

(b) If the directors shall, within twenty-eight days from the date of their receipt of such offer, accept in writing the offered shares on behalf of any nominee or nominees of the directors, willing

¹ If this form be adopted, Article 20 of Table A will be one of those excluded in Article 1.

² See the various sets of Articles in connection with the transfer of shares in Articles for Private Companies, Form No. 4, p. 203.

to accept the same at the price specified in the offer, or at the fair value (which acceptance shall state whether the price asked or the fair value will be paid), the transferring member shall, except in the case of the fair value being tendered, be bound to sell and transfer the offered shares to such nominee or nominees as the case may be, and the directors shall have absolute discretion in selecting such nominee or nominees.

(c) If the directors shall not accept the offer within twenty-eight days from the date of their receipt of such offer, or shall refuse the offer within that period, the transferring member may transfer the offered shares to any purchaser approved by the directors. In the event, however, of the transferring member electing not to accept the fair value he may decline to go on with the proposed sale, but he shall not be at liberty to sell or transfer to any person other than a member of the company.

(d) The fair value shall be such a sum as the auditor or auditors for the time being of the company shall certify, in writing, as in his or their opinion is the fair value, and the auditor or auditors shall be bound to certify such fair values on the application of any member.¹

11. The provisions of Articles 22 and 23 of Table A shall apply respectively to any tutor or curator of a minor member and any curator of an insane member, and to the liquidation of a company member.

¹ As explained in the notes to the cognate Articles for Private Company in Form No. 4, many private companies are family concerns or close corporations formed with the desire to preserve a particular continuity or class of membership, and the arrangements for accomplishing this object are multiform. It is unnecessary to repeat the specimens of Articles applicable to such arrangements given in Form No. 4, but they can of course be adapted, where necessary, as is often the case, in the adjustment of the Articles in this Form No. 5. It may be desirable, however, to provide that testamentary trustees or legatees of members shall be entitled to be registered as members without coming under the conditions imposed on *inter vivos* transference.

Form No. 5.

Private
Company.

FORFEITURE OF SHARES.

12. The notice of forfeiture prescribed by Article 24 of Table A may provide for payment of expenses which may have accrued or been incurred by reason of non-payment of any call or instalment, and in the event of forfeiture of any shares under the provisions of Article 26 of Table A, the forfeiture resolved upon thereunder shall affect and include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

SURRENDER OF SHARES.¹

13. The directors, on behalf of the company, may accept from any member, on such terms and conditions as may be agreed, a surrender of all or any of his shares.

ALTERATION OF CAPITAL.

14. All new shares created under the powers of Article 41 of Table A shall be issued upon such terms and conditions and with such rights, privileges, or conditions annexed thereto as the [extraordinary] resolution authorising the creation thereof shall direct, and, if no direction be given, as the directors shall determine; and, in particular, such shares, or any of them, may be issued with any preferential, guaranteed, deferred, qualified, or special rights as regards dividend or capital, or both, and with a special, or without any, right of voting.²

¹ As to surrender of shares, see *Company Law and Practice*, p. 442. Table A is silent upon this subject. A surrender of shares may be part of a scheme for reduction of capital subject to the provisions of the Act. Article 8 of Table A must not be breached in reference to the terms of surrender.

² The provisions of Article 4 of Table A have to be kept in view in regard to the effect that any issue of new share capital may have upon the holders of existing shares with rights or privileges attached thereto, *e.g.*, preference shares. Sometimes an Article embodying the fetters of Article 4 of Table A is substituted for Article 14 here suggested as follows:—

“14. The [share] capital may be reduced or increased or divided, and any [share] capital or any part thereof, for the time being unissued, original or otherwise, may be issued at a premium and with such preferential or guaranteed dividend or preferential or guaranteed right in the dis-

GENERAL MEETINGS.¹

Form No. 5.

Private
Company.

15. Two members personally present shall constitute a quorum at general meetings of the company, and a poll may be demanded by one member [personally present and holding or representing by proxy [one-tenth] of the issued share capital of the company] and Articles 51 and 56 of Table A shall be respectively modified accordingly.

tribution of the assets of the company, or both, or with such deferred dividend or postponement in the distribution of the assets of the company as the company shall think expedient; provided that no preference or special privilege attached to or belonging to any class of shares so far as then issued shall be interfered with, except with consent in writing of the holders of three-fourths of the then issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the then holders of the shares of that class, to which separate general meeting the provisions of these Articles relating to general meetings shall, *mutatis mutandis*, apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the then issued shares of that class." It is common to find Article 42 of Table A displaced by an Article to the effect that "Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of capital, the shares shall be under the control of the directors for allotment or disposal in their absolute discretion to such persons, at such times and generally on such conditions as they think proper, and with full power to give to any person the call of any shares for such time and for such consideration as they shall think fit." But it is thought that the objects of this substitute Article can be effected under Article 42 of Table A as it stands in virtue of its provisions for resolutions "to the contrary" of the Articles to be otherwise followed in the absence of such contrary direction. Cf. the Articles under this head in Form No. 4 for Private Companies, p. 217.

¹ It is unusual in this Form to make much alteration on Articles 45 to 48 of Table A, but the corresponding Articles in Form 4 for Private Companies, p. 223 may be consulted. An Article providing that a resolution signed by all the shareholders shall be valid and effectual is sometimes adopted; but, of course, a company meeting for the passing of a statutory (extraordinary or special) resolution cannot be dispensed with. The Court of Session has accepted evidence of the assent of all the shareholders of a company to an arrangement under section 120 of the Act as enabling the Court to dispense with the formality in such case of summoning meetings to consider the proposed scheme. See note to Article 73 of Articles for Private Company—Form No. 4, p. 227.

Form No. 5.

VOTES OF MEMBERS.¹

Private
Company.

16. In case of a co-partnership holding shares in the company, such partner only shall be entitled to vote in respect of such shares as may be named in a minute signed by all the partners and deposited at the office, but any other partner may be appointed proxy for the co-partnership.

17. No vote or act given or done by a proxy shall be rendered invalid by the revocation of the appointment by death or otherwise unless either notice in writing of such death or other revocation shall have been received by the company [or the directors] [or the secretary shall have knowledge thereof before the vote or act was given or done.]

18. No objection shall be made to the validity of any vote, except at the meeting at which such vote shall be tendered; and every vote, whether given personally or by proxy, not disallowed at such meeting, shall be deemed valid for all purposes whatever.

19. The chairman of any meeting shall be the sole and absolute judge of the validity of every vote tendered at such meeting, and may allow or disallow the votes tendered according as he shall be of opinion that the same are or are not valid.

DIRECTORS [*or* MANAGEMENT].

20. The [board of] directors shall consist of not fewer than three nor more than five members, including the managing director, [if any.]

¹ Article 61 of Table A is sometimes altered by the insertion of "other than trustees or executors registered as such" after "joint holders" there first occurring and by the addition of the following sentence, viz:—

"In the case of trustees or executors as such registered as joint holders they may vote by proxy signed by a quorum of their number, and failing such a proxy having been timeously lodged, they shall vote only through the first named in the register of members of those of their number who may be present." It may be useful to provide in the case of company members that "a corporation being a member of the company may, by minute of its directors, appoint any person [subject to the approval by the directors of the company] to act as its representative at all meetings of the company, and such representative shall be entitled to exercise the same functions on behalf of the corporation which he represents as if he had been an individual member of the company." In the case of adoption of this Article, it seems preferable to make it apply to all meetings instead of to particular meetings, unless considerations of stamp duty are of moment. Cf. note, p. 100.

21. The first directors shall be

Form No. 5.

Private
Company.

22. The said _____ shall be the first managing director of the company [and the said _____ shall be the first editor of the company's newspapers,] and they shall, in their option, respectively retain these offices during their lifetime or for any shorter period they may think fit respectively, and shall be paid such salaries for their services as the directors may from time to time determine, and upon these offices respectively becoming vacant, the company shall at an extraordinary general meeting called for the purpose elect some other person as managing director [or editor], as the case may be, for such period and on such terms as the company may determine.¹

23. The qualification of a director shall be the holding in his own right of shares of any class to the nominal value of [£50,] but a first director may act before acquiring his qualification, subject to his acquiring the same within one month after his appointment.²

24. The directors (other than the managing director [and editor]) shall retire from office at the ordinary general meeting in the year following their appointment, and in every subsequent year one of the directors shall retire from office.³

25. A majority of the directors resident for the time being in the United Kingdom shall be a quorum.⁴

¹ The appointment of an editor or other principal servant is more a matter for the directors than the company in general meeting. It may be suggested that contracts or references to contracts with others than directors as *e.g.*, the editor in this Article should not enter into the Articles of Association.

² See notes on cognate Article in Articles for Public Company, Form No. 2, p. 105.

³ See notes to Article 22.

⁴ If Articles 20 to 25 are adopted, then Articles 68, 70 and 78 of Table A will fall to be excluded in Article 1. Exceptional provision may fall to be made in certain cases with a view to controlling the *personnel* of the directorate, *e.g.*, "The holders of the deferred shares shall have the absolute right to nominate one of their own number, or being a company, one of its shareholders as a director of the company."

Form No. 5.

[MISCELLANEOUS MANAGEMENT ARTICLES.¹

Private
Company.
Variation.

[1. The number of directors shall not be less than two nor more than three.]

Variation.

[2. Until the appointment of the first directors the subscribers of the Memorandum of Association may exercise the powers of the directors, but shall not be required to hold any qualification beyond one share each, and shall not be entitled to any remuneration.]

Variation.

[3. Article 85 of Table A shall have effect subject to the proviso that the total number of directors shall not at any time exceed the maximum hereinbefore mentioned.]

or

Variation.

[1. The number of directors shall not be less than two nor more than five [except during the period of a casual vacancy and until a new director has been appointed, during which period the remaining director will act alone]. Clause 68 of Table A shall not apply.]

Variation.

[2. The first directors of the company shall be and , who shall hold office until the annual general meeting in the year 1924. The first chairman of the directors shall be the said , who shall hold office until the annual general meeting in the year 1920, and thereafter the said and shall hold the office of chairman for alternate years for the period to the annual general meeting in 1924 when the chairman shall be appointed by the directors, and clauses 78 and 90 of Table A shall be modified accordingly];

or

Variation.

[1. The first directors of the company shall be and , who shall, subject to the provisions of Table A and of these Articles, hold office for life. In the event of both or either of the first directors resigning his office, dying, or becoming while holding such office physically or mentally

¹ The selection of these Articles is based upon the examination of registered Articles, and is of use in showing the variety of arrangements made in connection with Private Companies.

incapable of performing his duties, the director so resigning or becoming physically incapable, or in the case of his death, his executors or any person nominated by him to exercise this power, or the *curator bonis* of such director in case of his mental or other incapacity, shall so long as he or they retain the shares held by him at the date of his resignation, death, or incapacity, or so long as his or their holding is not less than [1000] shares [and he or they have the concurrence of shareholders whose holdings along with his or their holding shall amount to not less than [one-half] of the total shares then issued], have power to appoint a substitute director in place of such first director, and from time to time to recall, renew, or vary such appointment, and such substitute director shall have the same powers and be subject to the same conditions in all respects except as regards the right to appoint a substitute director as the director in whose place he was elected.]¹

Form No. 5.

Private
Company.

¹ Provision for the nomination of directors by members holding substantial interests in a company is frequently made in the case of Private Companies. The following Articles have been found useful in practice, namely:—1. "Any member or members or the executors or administrators of a deceased member or members separately or in combination holding not less than [two-ninths] of the shares in issue at the time, and in the case of such executors or administrators, although unconfirmed or unregistered as members, shall be entitled, in respect of each lot or lots of shares, (amounting to [two ninths] of the shares in issue) held by such member or members or registered in the name of such deceased member or members, to nominate in writing by one or more documents a director, and any one so nominated shall be deemed to be a nominated director." 2. "A nominated director shall not require to be a member of the company or to retire by rotation, but his appointment shall be subject to the following rules:—

- "(1) His nomination shall specify the serial numbers of the shares in respect of which it is made and shall be lodged with the secretary of the company at the office of the company;
- "(2) A copy of every nomination lodged with the secretary shall be forthwith transmitted by him to each of the directors of the company by registered letter post;
- "(3) No nomination shall be recalled in consequence of the death of the nominator or nominators or of any transfer of the shares in respect of which it was made;
- "(4) Every nomination may be recalled by the nominator or nominators in writing without his or their making a new nomination;
- "(5) Every nomination in virtue of certain shares shall imply the recall of any prior nomination depending in whole or in part upon the same shares; (*see next page.*)

Form No. 5. [2. Articles 78 to 84, 86, 88, and 90 of Table A shall not apply so long as the first directors or substitute directors appointed as aforesaid hold office, and shall not in any case apply to the first or substitute directors, and Article 89 of Table A shall be read as if the words "or director" were inserted in each case after the words "the continuing directors."]

Private
Company.

Variation.

Variation.

Variation.

[3. After the termination of the original management the number of directors shall not be less than three nor more than five.]

[4. A director may hold the office of secretary or any other office under the company, except that of auditor.]

CHAIRMAN.

Variation.

[. *Name, designation, and place of abode*], shall, at and from the incorporation of the company become and hold the office of chairman of the company, and shall in his option retain that office during his lifetime, or for any shorter period he may think fit, and he shall be at liberty to go abroad or be absent at any time and for any period without vacating his office.

or

Variation.

[So long as the number of directors does not exceed two there shall be no chairman of the directors, and each of the directors shall have one vote only, and if any difference of

"(6) In the case of implied recall, (a) if the whole of the shares supporting the director whose nomination is impliedly recalled are made use of in the new nomination, the recall shall take immediate effect, but (b) if only part of such shares are made use of for the purposes of such new nomination, such recall shall only take effect after the lapse of one month and upon the non-lodgment during that period of another nomination in respect of other shares sufficient in combination with the shares left standing for the nomination of a director, and in the event of such further nomination it shall be deemed to replace the other to the same effect as if no interval had elapsed between such implied recall and such new nomination ; and

"(7) No shares shall be used to support more than one nomination at the same time."

Such Articles have proved useful also in the case of unlimited companies. As to substitute directors, see note to Article 97 in Articles for Public Company—Form No. 2, p. 108 and variation Article in this Form, p. 268.

opinion shall arise between them as to the policy to be pursued in the business or on questions of management the same shall be referred to the summary and final decision of the auditor of the company for the time being, or, in the option of either of them, to the decision of the president, whom failing from any cause the treasurer, for the time being of the Institute of Accountants and Actuaries in Glasgow, and Article 87 of Table A shall be modified accordingly.]¹

Form No. 5.
Private
Company.

MANAGING DIRECTOR.

[. *Name, designation, and place of abode*], shall be the first managing director of the company, and shall hold that office during the pleasure of the chairman, and he shall be bound to demit and be held as having demitted office, either on receiving payment of [£] or on the expiry of six months after written intimation shall have been given to him of a minute having been signed by the chairman to that effect, but in the event of the said being deemed in the opinion of the chairman guilty of serious misconduct, the chairman shall have right to call upon him, and he shall be bound to demit and be held as having demitted office immediately upon receipt of intimation that a minute has been signed by the chairman to that effect.²

or

[. *Name, &c.*, shall be the managing director of the company until he resigns office or dies or ceases to hold at least [£1000] of the nominal share capital of the company, and whilst he retains the said office he shall have authority to exercise all the powers, and discretions vested by these Articles in the directors generally, and all the other directors (if any) for the time being of the company shall be under his control and shall be bound to comply with his directions in regard to the business and affairs of the company.]

or

¹ It sometimes happens that the membership of the company may be equal as regards voting power, and the Editor has seen an Article on similar lines in practical operation for the purpose of avoiding a deadlock at a general meeting of the company. But it does not seem a satisfactory mode to call in the aid of outsiders by reference or otherwise.

² "During pleasure" does not permit of employment being terminated without reasonable notice or without an allowance in lieu of such notice. See *Morrison v. Abernethy School Board*, 1876, 3 R. 945.

Form No. 5. [The said whilst he holds the office of managing director, may from time to time, and at any time, appoint by writing under his hand any other persons to be directors of the company, and may define, limit, and restrict their powers, and may fix and determine their remuneration and duties, and may at any time remove any director howsoever appointed, and may at any time convene a general meeting of the company, and if the said. shall resign the office of managing director, or shall cease to hold at least [£1000] of the nominal share capital of the company, he shall become an ordinary director.]

or

Variation. [If the said dies while he holds the office of managing director he may, by any testamentary writing, appoint any person to be managing director in his place, and define the powers and discretions of such managing director, with his remuneration and qualification, and his period of office, and in default of any definition of his powers such appointee shall only have the powers of an ordinary director.]

Variation. [The said while he continues to hold the office of managing director, shall be entitled to receive out of the profits of the company as remuneration such sums as he shall from time to time determine.]

Variation. [Upon the office of managing director becoming vacant through failure of the said or his nominee as before provided for (which event is hereinafter referred to as the termination of the original management), the other directors, if any then in office, shall forthwith convene a general meeting of the company for the purpose of electing a board of directors, and, if they do not convene such meeting within [fourteen days] after said event, or if there are no directors at the time. any two members may convene such meeting, and thereafter the powers and duties of the directors shall be as set forth in Table A.]

or

Variation. [A director may from time to time appoint any person to act in his absence as his alternate [*or substitute or deputy*] director at meetings of the directors (and such person may be one of the directors, in which case such director shall have a vote as [alternate] director as well as his own vote as director), and such person shall, at the meeting or meetings for which he is

appointed, have all the powers and discretions, and be subject to the disqualifications and liabilities of a director. Every such appointment must be made in writing under the hand of the appointer, and may at any time be revoked in like manner, and may be general or for a specified period or for specified meetings, and notice of every such appointment or revocation must be given to the company, and the appointee must furnish the company with his address, and whilst any such appointment is in force, notice of every meeting of the directors shall be given to him.]¹

Form No. 5.

Private
Company.REMUNERATION OF DIRECTORS.²

[. The remuneration of each of the directors shall be at the rate of [£ per annum], and such additional sums as shall be determined by the company in general meeting. In addition to such remuneration, the directors shall be paid all their travelling and other expenses properly and necessarily expended by them.] Variation.

or

[. Each of the first directors, [and any substitute director nominated in his room as aforesaid], shall be entitled to a salary at the rate of £ per annum, payable quarterly as from 21st December, 1919, which, unless otherwise directed by the company, shall be in full of directors' fees. Any additional directors shall be entitled to such remuneration as may be determined by the company. The directors shall in addition be entitled to all their travelling and out-of-pocket expenses properly and necessarily incurred by them in the interests of the business.] Variation.

or

¹ See notes to Variation in this Form, p. 268 and also notes to Article 97 in Articles for Public Company, Form No. 2, p. 108, and as to provision for control by a majority shareholder, see Article 101 in Articles for Private Company, Form No. 4, p. 241. Certain companies with foreign interests have found it useful to provide for assistant or deputy directors by an Article in the following terms:—"The directors may from time to time and at any time appoint any other persons to be assistant directors of the company, and may define, limit and restrict their powers, authorities and discretions and may fix and determine their remuneration and duties and may remove any director so appointed; but unless otherwise determined by the directors, no assistant director shall receive any remuneration."

² See Article 96 in Articles for Public Company—Form No. 2, p. 106 and notes relative thereto.

Form No. 5. [. The remuneration of the directors (other than the managing director) shall from time to time be determined by the company in general meeting, and shall be divided among the directors as they may think fit. In addition the directors shall be paid their travelling and out-of-pocket expenses properly and necessarily expended by them, including, unless and so far as the directors shall decide otherwise from time to time, travelling expenses to attend board, [and] committee, [and company] meetings from and to their permanent residence.]

or

Variation. [. The remuneration of the chairman and of the managing director shall be at the rate of £500 per annum each, or such additional remuneration as the company in general meeting may determine.]

or

Variation. [. The remuneration of a director, other than a managing director, shall be at the rate of [one guinea] for each meeting of the company or of directors attended by him.]

or

Variation. [. If any director shall be called upon to go or reside abroad on the company's business, or otherwise perform extra services at home or abroad, or shall undertake any cautionary obligation or guarantee on behalf of the company, the Board may arrange with such director for such special remuneration for such services, either by way of salary, commission or payment of a stated sum of money, as they shall think fit, and the directors shall be repaid any travelling or other expenses incurred in connection with the business of the company, including their attendance at meetings of the board.]

POWERS AND DUTIES OF DIRECTORS [*or* MANAGEMENT.]¹

Variation. [. The business of the company shall be carried on by or under the control of the chairman and the managing director, or of either of them, and according to such regulations as they or he may from time to time prescribe, subject only to such control of

¹ Articles 71 and 72 of Table A are ample, and apart from the necessity for treating specially the case of managing directors, it will, as a rule, be unnecessary, if at all, to do more in the case of this Form No. 5 than to adopt one or other of the Articles given in the selected variations. But cf. article 96 of Form No. 4 for Private Companies, p. 235. Where there is no directorate in the sense of a Board, the Articles here suggested may be adopted.

general meetings as is prescribed by these Articles or by the Act of 1908 and that either singly or in connection with any other company, corporation, firm, or person; but no resolution or direction made by the company in general meeting shall invalidate any prior act of the chairman and the managing director, or of either of them, which would have been valid if such resolution or direction had not been made. No person, except the chairman and the managing director, or either of them, and persons expressly authorised by them or him in writing, and acting within the limit of the authority conferred on them, shall have authority to enter into any contract, or to accept, make, draw, or endorse any promissory note or bill of exchange on behalf of the company, or otherwise to pledge the credit of the company.¹

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Private
Company.

[. Without prejudice to the powers conferred on the chairman and the managing director, jointly or severally, by law or by the preceding Article, they or he shall have, *inter alia*, the following powers, videlicet:—²

Variation.

- (a) To pay the costs, charges, and expenses of and incidental to the formation and registration of the company.³
- (b) To delegate to any servant of the company all such powers and authorities as they or he may from time to time, in their or his discretion, see fit including power to negotiate and conclude contracts, and do all other acts and things necessary and proper for carrying on the business of the company, make, execute, and deliver agreements, deeds, and instruments of every description, and to enter into contracts in the course of the company's business with any member or official of the company, (themselves or himself included)

¹ See note to Article 95 of Form No. 4, p. 235.

² Cf. Article 96 in Articles for Private Company, Form No. 4, p. 235. Some of the powers here given are not in that Form, while others in that Form are here omitted. In the view of the Editor, most of the powers taken in Articles and dealing with the ordinary commercial management of companies might be omitted without any disadvantage to the administration of any company's affairs. Some large companies have been in existence for years with very short constitutions, both as regards the Memorandum and the Articles. The simplicity of their regulations has never prejudiced or hampered their business operations.

³ Cf. Article 71 of Table A.

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Company.

under the special declaration that no chairman or managing director shall vacate office by reason of his or of any company, or partnership, of which he is a director, member, or partner, having transacted business for or entered into contracts with the company; and that any member of the company, whether chairman, managing director, or not, and any company, or partnership of which he may be a director, member, or partner may enter into contracts with the company, or accept employment from the company, and receive and retain profits and remuneration in respect thereof.

- (c) To appoint, and at their or his discretion remove or suspend, such managers, secretaries, officers, clerks, agents, and servants for permanent, temporary, or special services as they or he may from time to time think fit, determine their duties, fix their salaries or emoluments, and require security in such cases as they or he think fit.
- (d) To secure the fulfilment of any contracts or obligations entered into by the company, by securities over all or any of the property or assets of the company and its unpaid capital for the time being, or in such other manner as they or he may think fit.
- (e) To give to any director or officer or other person employed by the company an interest in any particular business or transaction, either by way of a commission on the profit or gross expenditure thereon or otherwise, or a share in the general profits of the company, and such interest, commission, or share of profits, shall be treated as part of the working expenses of the company.
- (f) To institute, conduct, defend, compromise, or abandon any legal proceedings by or against the company or its officers, or otherwise concerning the affairs of the company, refer any claims or demands by or against the company to arbitration, and observe and perform the awards and act or appoint any person to act on behalf of the company in all matters relating to bankrupts and insolvents.

- (g) To subscribe to hospitals, infirmaries, charities, or religious institutions or objects, or any other public, general, or useful object; grant or continue any pensions, annuities, or retiring allowances; and make any donations to employees. Form No. 5.
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Company.
- (h) To insure against marine and other risks of transit, loss by strikes, lockouts, workmen's compensation, fire, accident, or other risks or contingencies.
- (i) To draw, accept, or endorse cheques, promissory notes, bills of exchange, and other negotiable instruments [on behalf or for the purposes of the Company] for any moneys borrowed or other debts or liabilities of the company.

[. Any deed to which the company is a party shall be validly executed on behalf of the company, if the same be sealed by the seal, and be subscribed on behalf of the company by the chairman and the managing director of the company, or by the managing director with the written consent of the chairman.¹ Variation

[. In all questions between the chairman and the managing director not otherwise herein provided for concerning the conduct of the company's business, the decision of the chairman shall be final and binding.] Variation.

DIRECTORS' BORROWING POWERS.²

26. The directors, without prejudice to their general powers, may, in the name and on behalf of the company, and from time to time at their discretion, borrow from the directors or from others, any sum or sums of money for the purposes of the company, and that upon such terms, and in such manner, as they may think fit [provided that the moneys so borrowed and owing at any one time shall not exceed in the aggregate the sum of [£10,000], and no lender or other person dealing with the company shall be concerned to see or inquire whether this limit is observed].

or

¹ If this Article be adopted, Article 28, p. 281, of this Form should be modified.

² See cognate Articles 51 to 57 inclusive in Articles for Private Company—Form No. 4, p. 222, and similar Articles 127 *et seq.*, in Articles for Public Companies—Form No. 2, p. 136 *et seq.*

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Variation.

[. The directors may from time to time with or without security receive on deposit, borrow and reborrow by way of discount, cash, credit, or overdraft, or otherwise raise, for the purposes of the company, such sums of money as they shall from time to time think proper, at such rate of interest, and upon such terms, and with such provisions in favour of the lender, as they may approve; and as security for any money so received, raised, borrowed or reborrowed, they may grant securities over or pledge all or any part of the Company's property and assets, and may issue under the common seal of the company any bonds, debentures, mortgage debentures, debenture stock certificates, or other securities, and the lender shall not be bound to inquire as to the occasion of, or necessity for, the loan, or the power of the directors to borrow; but every such bond or other security as aforesaid under the common seal of the company shall, in favour of the lender and every person claiming through him, be in itself sufficient evidence of its own validity, and be conclusive on the company notwithstanding any irregularity.

Variation.

[. Every bond, debenture, debenture stock certificate, or other deed for securing the payment of money issued by the company may be issued at a discount, premium, or otherwise, and with any special privileges as to redemption, surrender, drawings or otherwise, and may from time to time be renewed, re-issued, varied, exchanged, or discharged, and may be so framed that the moneys thereby secured shall be assignable free from any equities [*or all claims between the company and the person to whom the same may be issued*].

Variation.

[. The directors shall cause a proper register to be kept, in accordance with section 100 of the Act of 1908, of all mortgages and charges specifically affecting the property of the company.

. or

Variation.

[. The directors may from time to time at their discretion borrow any sum or sums of money for the purposes of the company, and they may undertake to repay and secure the repayment of such moneys in such manner and upon such terms and conditions in all respects as they think fit, and in particular by the issue of debentures or debenture stock of the company secured or charged upon all or any part of the property of the company, including its uncalled capital for the time being.]

DISQUALIFICATIONS OF DIRECTORS.¹

Form No. 5.

Private
Company.27. The office of director shall be vacated *ipso facto*—

- (a) If he becomes bankrupt, [*or* insolvent, or suspends payment, or compounds with his creditors]; *or*
- (b) If he is of unsound mind; *or*
- (c) If he does not comply with section 73 of the Act, [*or* If he does not obtain the required amount of shares to qualify him for office within month after appointment [*or* election] or cease to hold the same, and a person vacating office shall be incapable of being re-appointed [*or* re-elected] until he has obtained his qualification.]; *or*
- (d) [If he shall absent himself [*or* be absent] from meetings of the directors during a period of [] months without special leave of absence from the directors duly minuted]; *or*
- (e) If he holds any other office of profit under the company except that of managing director, manager, or secretary [*or* If he accepts the office of auditor]; *or*
- (f) If he is concerned or participates in the profits of any contract with the company unless he complies with the provisions of article [] hereof; *or*
- (g) If the president, whom failing, the treasurer, for the time being of [the Institute of Accountants and Actuaries in Glasgow,] certifies that he is guilty of conduct materially prejudicial to the interests of the company, or that he has disobeyed the reasonable instructions of the company, or that he is incapable of performing his duties, and the certificate by such president or treasurer to such effect shall be sufficient and conclusive evidence of the fact so certified by him;²

or

¹ See cognate Articles under this head in Articles for Private Company, Form No. 4, p. 233, and in Articles for Public Company, Form No. 2, p. 118.

² Article 77 of Table A will fall to be excluded in Article 1 in the event of the adoption of this Article. Reference is made to the notes to the cognate Article 101 in Articles for Public Company, Form No. 2, p. 118. Resignation and removal are not inserted as one of the alternatives. Removal is provided for in Article 86 of Table A. See *Company Law and Practice*, p. 463, as to resignation.

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Variation.

[27. A director shall not be disqualified by his office from entering into contracts, arrangements, or dealings with the company, nor shall any contract, arrangement, or dealing with the company be null or set aside, nor shall a director be liable to account to the company for any profit arising out of any contract, arrangement, or dealing with the company by reason of such director being a party to or interested in or deriving profit from any such contract, arrangement, or dealing, and being at the same time a director of the company; provided that such director discloses to the board at or before the time when such contract, arrangement, or dealing is determined upon, [or the other directors are aware of his being interested therein]; or if the other directors are not aware of it and his interest be subsequently acquired, provided that on the first possible occasion he discloses to the board the fact that he has acquired such interest, and no director shall vote as a director in regard to any contract, arrangement, or dealing in which he is interested, or upon any matter arising thereout; and if he shall so vote, his vote shall not be counted, nor shall he be reckoned for the purpose of constituting a quorum of directors; but this prohibition shall not apply [to the agreement mentioned in article [] hereof, or to any matters arising thereout, or] to any contract by or on behalf of the company to give to the directors or any of them any security by way of indemnity, and it may at any time or times be suspended or relaxed to any extent by a general meeting; and a general notice [or knowledge] that a director is a member of any firm, company, or syndicate shall be sufficient disclosure under this Article, and it shall not be necessary to give special notice relating to any particular transaction with such firm, company, or syndicate; and Article 77 (e) of Table A shall be modified accordingly.]

or

Variation.

[27. Any director or company of which he is a member may enter into contracts or engagements with the company, either as seller, employee, or otherwise, for his or its own benefit, and every such contract or engagement shall be valid, and no director shall vacate his office or be disqualified by reason thereof, or be liable to account for any profit thereby made; but no director shall vote in respect of any contract in which he or any company of which he is a member may be interested, and clause 77 (e) of Table A shall not apply.]

or

[27. Except in respect of the agreement referred to in Article **Form No. 5.**
 [] hereof, or any matter arising thereout, no director shall **Private**
 vote as a director in regard to any contract, arrangement, or **Company.**
 dealing in which he is interested, or upon any matter arising **Variation.**
 thereout, nor shall he be reckoned in estimating a quorum
 when any such contract, arrangement, or dealing is under
 consideration.]

or

[27. Notwithstanding the terms of Article 77 of Table A, **Variation.**
 the office of director shall not be vacated by reason of any
 director holding any office of profit under the company, but the
 said office shall be vacated if, without the previous consent of all
 the directors he shall engage, either on his own account or as a
 member of a partnership, or as a director of a company, or as
 manager or servant of any person, firm, or company engaged in
 any business wholly or in part similar to any business for the
 time being carried on by the company.]¹

THE SEAL.²

28. The seal of the company shall not be affixed to any
 deed except by the authority of a resolution of the board of
 directors, and in the presence of at least two directors, and
 those two directors shall sign every deed to which the seal of
 the company is so affixed in their presence.³

or

[28. The seal of the company shall not be affixed to any **Variation**
 deed except by the authority of the directors, and in the
 presence of at least one director and of the secretary, or such
 other person as the directors may appoint for that purpose, or
 any two directors; and such director and secretary or other
 person, or such two directors, as aforesaid, shall sign every
 deed to which the seal of the company is so affixed in their
 presence.]

¹ One or other of these variations of Article 27 may be used on the
 footing of Article 77 of Table A forming one of the Articles of the company.

² Article 76 of Table A will fall to be excluded in Article 1 if this
 Article is adopted. See notes under "common seal" in Articles for
 Public Company—Form No. 2, p. 54.

³ If this Article or the form in the variation be adopted, the Varia-
 tion on p. 277 of this Form will be omitted.

Form No. 5.

Private
Company.DIVIDENDS AND RESERVE.¹

29. The company, before declaring any dividend, may annually set aside, out of the profits of the business, such sums as the directors may recommend to form a reserve fund to be applied as the directors think proper, including among other purposes, for the meeting of losses, averages or contingencies, equalisation of dividends, redemption of debentures, improvement, alteration, repair or renewal of the heritable or other property of the company, [repair of vessels] loss in tear and wear or other depreciation or diminution in value of any property of the company; and the sums so set aside as a reserve fund may be invested by the directors upon such securities as from time to time they may approve other than in the purchase of or loans upon the security of shares of the company; and such reserve fund shall be at the disposal of the directors for any of the said purposes and generally for any purpose beneficial to the company, and out of the profits or from the reserve fund the directors may also form an insurance fund.²

30. The company shall not be responsible for the loss of any dividend warrant, cheque, or post office order which shall be sent by post in respect of dividends, whether by request or otherwise [and no dividend or bonus shall bear interest as against the company].³

31. The directors [or managing director] may deduct from the dividends payable to any member all such sums of money as may be due by him to the company on account of calls or otherwise, and no member shall be entitled to claim any dividend in respect of shares so long as any call or interest and expenses due in respect thereof remain unpaid.

32. Any general meeting declaring a dividend may resolve that the same or part thereof shall be applied in paying up *pro tanto* the capital uncalled on the shares held by the members to whom the sum would otherwise be payable, and the directors shall give effect to such resolution accordingly; but any member

¹ Cf. Articles under the headings of Dividends and Reserve Fund in Form No. 4 for Private Companies, pp. 244 and 246.

² In the case of the adoption of this Article, Article 99 of Table A will fall to be excluded in Article 1.

³ See Article 102 of Table A.

whose shares are fully paid up or advanced shall be entitled to his share of such dividend in cash. **Form No. 5.**

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Company.

33. The dividends and interim dividends paid on all shares held by the directors, agents and employees of the company shall, so long as the holders of such shares shall be directors, agents and employees of the company respectively be deemed to form an additional part of the remuneration paid to them by the company for their respective services.¹

34. The cost to the company, of and incident to the acquisition by purchase of any property of a [wasting or] depreciating nature, may be treated as revenue expenditure, and spread over a series of years, or otherwise treated as the directors may determine; and the amount of such expenditure for the time being outstanding and not written off may, for the purpose of calculating the profits of the company for dividend, be reckoned as an asset.²

or

[34. Any costs attending the formation of the company, or in connection with the purchase of any business or contract, or the establishing of any new branch of business, or any extraordinary expenditure, may be spread over a series of years, and, for the purpose of calculating profits, such costs or expenditure, or any part thereof for the time being not written off, may be reckoned as an asset.² Variation.

[SECRECY.

[. No member shall be entitled to demand admission to any premises where the manufacturing business of the company is carried on; and no member, or general or other meeting of members, shall be entitled to require discovery of or any information respecting any details of the company's business, or any matter which is or may be in the nature of a trade secret process, or which may relate to the conduct of the business of the company, and which, in the opinion of the directors, it will not be expedient to communicate; and, particularly, no member shall be at liberty without the express sanction in that behalf of the directors to see any of the working books or documents of the company, or Variation.

¹ See note to Article 86 of Articles for Private Company—Form 4, p. 232.

² These Articles seem of doubtful validity and are not recommended.

Form No. 5. to interfere in any respect with the details of the management and conduct of the business of the company].¹
 Private
 Company.

ACCOUNTS.²

35. The balance sheet and report provided for in Article 107 of Table A shall not be circulated, and no copy of or extract from the same shall be taken or made without the consent of the directors.³

or

Variation.

[35. The accounts of the company shall be balanced once in every year at such dates as the directors may from time to time determine, and a balance sheet showing the position of the company at the close of each such period shall be made up by the directors, and when audited and certified by the auditors, submitted by them to the annual general meeting; and

(a) The balance sheet shall be accompanied by a report of the directors as to the state of the company's affairs and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund.

(b) The balance sheet and report shall not be circulated, and no copy of or extract from the same shall be taken or made without the consent of the directors].⁴

AUDIT.

36. Every balance sheet of the company, when audited and approved by a general meeting, shall be conclusive except as regards any error discovered therein within [three] months next

¹ It will only be in very exceptional cases that an Article of this description will be adopted. See notes to this Article in Articles for Public Company, Form No. 2, p. 153, and in Articles for Private Company, Form No. 4, p. 251.

² See Articles under this heading in Articles for Public Company, Form No. 2, p. 153, and in Articles for Private Company, Form No. 4, p. 246.

³ Article 108 of Table A falls to be excluded in Article 1 if this Article is adopted.

⁴ Articles 106 to 108, both inclusive, of Table A fall to be excluded in Article 1 upon the adoption of this Article. Copies can be taken by members of the balance sheet and of the auditor's report under their statutory rights in spite of Articles in this form. See sub-section (3) of section 113 of the Act.

after the approval thereof; and whenever any such error is discovered within that period, the balance sheet shall forthwith be corrected, and thenceforth shall be conclusive.¹

Form No. 5.

Private
Company.NOTICES.²

37. A notice or any other document required to be given, served upon, or sent to a member may be served by the company upon such member either personally or by sending it through the post in a prepaid letter addressed to his registered place of abode; and in any case where a given number of days' notice or notice over any other period is required to be given, the day of the service of the notice shall not, and the day upon which such notice shall expire shall be included in such number of days or other period.³

38. Any member residing out of the United Kingdom may register an address within the United Kingdom at which all notices or other documents shall be served or sent to him, and all notices sent by post to such address shall be deemed to be well served.³

39. Any notice if served by post shall be deemed to have been served on the day on which the letter containing the same was posted, and on proving such notice it shall be sufficient to prove [by a certificate under the hand of the Secretary or other official of the Company] that such letter was properly addressed and stamped and put into the post office.³

40. The provisions of Articles 113 and 114 of Table A with reference to a person entitled to a share in consequence of the death or bankruptcy of a member shall apply to any tutor or curator of a minor member and any curator *bonis* of a lunatic member and to the liquidator of a company.

¹ See Articles under this heading in Articles for Private Company, Form No. 4, p. 250, and in Articles for Public Company, Form No. 2, p. 156. This Form No. 5 is regulated by Article 109 of Table A incorporating sections 112 and 113 of the Act.

² See Articles and relative notes under this heading in Articles for Public Company, Form No. 2, p. 158, and in Articles for Private Company, Form No. 4, p. 250.

³ With the adoption of these Articles, Articles 110 and 111 of Table A will fall to be excluded. See notes to cognate Article 167 in Articles for Public Company, Form No. 2, p. 160, and note p. 93.

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41. For the purpose of passing a special resolution of the company two meetings may be convened by one and the same notice; and it shall be no objection to such notice that it only convenes the second meeting contingently on the resolution being passed by the requisite majority at the first meeting.¹

42. Every person who, by operation of law, transfer, or other means whatsoever, shall become entitled to any share shall be deemed to have knowledge of these Articles and of every notice which, previous to his name and address being entered in the register of members in respect of such share, shall have been given to the person from whom he derives his title.

43. A notice or other application required to be served by a member or other person upon the company may be served either by leaving the same or sending it through the post addressed to the company at the office of the company.

TRUSTEES.

44. The directors at any time, with the sanction of an extraordinary general meeting of the company, may register any part of the company's property in the names of trustees for debenture holders or debenture stockholders, subject to the provisions of a trust deed to be approved of by the directors and the trustees; and any director or other person may hold as trustee and on behalf of the company licences, leases, letters patent, concessions, or shares, stock, debentures, or mortgages of or in any public company or any other rights or securities.

INDEMNITY.

45. Every [*or* The chairman, managing] director, trustee, manager, [auditor], secretary, and [every] other officer or servant of the company shall be indemnified by the company against all costs, losses, and expenses which any such officer or servant may incur or become liable to by reason of any contract entered into, or act or deed done by him as such officer or servant, or in any way in the discharge of his [office, trust or] duties, including all travelling expenses, and it shall be the duty of the directors out of the funds of the company to indemnify him accordingly.²

¹ See notes in cognate Article in Articles for Public Company, Form No. 2, p. 98.

² See notes on cognate Article in Articles for Public Company, Form No. 2, p. 165.

46. No director or other officer of the company shall be liable **Form No. 5.**
 for the acts, receipts, neglects, or defaults of any other director **Private**
 or officer, or for joining in any receipt or other act for conformity, **Company.**
 or for any loss or expense happening to the company through
 the insufficiency or deficiency of title to any property acquired
 by order of the directors for, or on behalf of, the company, or for
 the insufficiency or deficiency of any security in or upon which
 any of the moneys of the company shall be invested, or for any
 loss or damage arising from the bankruptcy, insolvency, or
 wrongful act of any person with whom any moneys, securities,
 or effects shall be deposited, or for any other loss, damage, or
 misfortune whatever which shall happen in the execution of the
 duties of his respective office or in relation thereto, unless the
 same happen through his own dishonesty.

WINDING UP.¹

47. In case the company is wound up, the assets available for
 distribution among the members shall belong to and be divided
 among the holders of ordinary shares in proportion to the
 amounts paid up or treated as paid up on such ordinary shares
 respectively at the date of winding up, and if the assets available
 for distribution among the members shall be insufficient to repay
 the whole of the paid-up capital, such assets shall be distributed
 so that, as nearly as may be, the losses shall be borne by the
 members in proportion to the capital paid up, or which ought to
 have been paid up, on the shares held by them respectively at
 the commencement of the winding up; but this Article shall be
 without prejudice to the rights of holders of shares issued under
 special conditions, preference shares having priority over the
 ordinary shares.

or

[47. If the company shall be wound up, and there shall be **Variation.**
 any surplus assets after payment of all debts and satisfaction of
 all liabilities of the company, such surplus shall be applied first,
 subject to the rights of members entitled to shares issued upon
 special conditions, in repaying to the holders of any preference
 shares the amount paid up or reckoned as paid up thereon, and
 any arrears of dividend thereon whether formally declared or
 not, and the balance in repaying to the holders of the ordinary

¹ See notes on Winding-up Articles in Articles for Public Company,
 Form No. 2, p. 167.

Form No. 5. shares, the amounts paid up or credited as paid up on such ordinary shares. If there shall remain any surplus assets after repayment of the whole of the paid-up capital, such surplus assets shall be divided among the ordinary shareholders in proportion to the capital paid up or credited as paid up on the shares which are held by them respectively at the commencement of the winding up.]

Private
Company.

48. If the company shall be wound up, the liquidator-s (whether voluntary or official) may, with the sanction of an extraordinary resolution, divide among the members in specie any part of the assets of the company, and may, with the like sanction, vest any part of the assets of the company in trustees upon such trusts for the benefit of the members as the liquidator-s with the like sanction shall think fit.

49. In the event of the loss of one-half of the issued capital of the company for the time being, the company shall be wound up voluntarily; and any managing director, director, agent, trustee, or member of the company, alone or jointly with any other person, may become a purchaser of property belonging to the company in the winding up thereof.

NAMES, DESCRIPTIONS, AND ADDRESSES OF SUBSCRIBERS.¹

JAMES RAE BURN, Railway Engineer, 90 George Street, Edinburgh.

THOMAS HOTSON, Mining Engineer, 19 Rupert Street, Glasgow.

Dated this day of , One thousand nine hundred and nineteen.

Witness to the above signatures—

ROBERT FINLAY, *Law Clerk*,
16 West George Street, Glasgow.

¹ See notes as to execution of Articles by Subscribers in Articles for Public Companies, Form No. 2, p. 169.

ARTICLES OF ASSOCIATION
FOR
PRIVATE COMPANY—LIMITED BY SHARES.
ADOPTING TABLE A WITH VARIATIONS.¹

Form No. 6.

THE COMPANIES ACTS, 1908 to 1917.

[PRIVATE] COMPANY LIMITED BY SHARES.

ARTICLES OF ASSOCIATION
OF
_____, LIMITED.

CONSTITUTIONAL [*or* FUNDAMENTAL *or* PRELIMINARY.]

1. The company [*or inserting name of company*] is established as a private company in the sense of [*or within the meaning of*] section 121 of the Companies (Consolidation) Act, 1908, and under the declaration that the regulations of Table A in the First Schedule to that Act shall apply to the company with the exception of Articles 35 to 40, both inclusive, 68, 73, and 88, and subject to the alterations, modifications, and additions expressed in the following Articles.

2. The number of members of the company (exclusive of persons who are in the employment of the company and of persons who, having been formerly in the employment of the company, were while in such employment and have continued after the determination of such employment to be members of the company) shall be limited to fifty, and no transfer which would, if registered, increase such number of members beyond fifty (exclusive as aforesaid) shall be valid, and the directors shall refuse to recognise or register any transfer which

¹ See General Notes to Forms Nos. 5, 6, and 7, p. 254.

Form No. 6. would so increase such number; subject to the proviso that two or more persons, holding one or more shares jointly, shall be regarded as a single member.¹

Private
Company.

3. No invitation shall be made to the public to subscribe for any shares or debentures of the company, and the company and its directors, officials, agents, and all others acting on its behalf, are hereby prohibited from making any such invitation to the public.

OFFICE.

4. The registered office of the company shall be in
or at such other place as the directors may from time to time appoint.²

TRANSFER OF SHARES.

5. All transfers of shares of the company shall be subject to the approval and sanction of the [board of] directors, and the board [or directors] may refuse to recognise or register any transfer without assigning any reason for such refusal.³

DIRECTORS.

6. The number of directors, until otherwise determined by the company in general meeting, shall not be less than [three] nor more than [eight] and the first directors shall be

and unless otherwise determined two shall be a quorum;⁴ [and in addition to any remuneration to which they may be entitled,

¹ In consequence of *Royalties*, 1912, 1 K.B. 330, the 121st section of the Act was amended by the Act of 1913, so as to limit the number of members to fifty "(exclusive of persons who are in the employment of the company and of persons who having been formerly in the employment of the company, were while in such employment and have continued after the determination of such employment to be members of the company)."

² This Article can be omitted.

³ This Article modifies Article 20 of Table A, which in terms excludes fully-paid shares from its operation. The statutory restriction must, *ex facie*, apply to all shares.

⁴ This Article displaces Nos. 68 and 88 of Table A.

the directors shall be paid all reasonable travelling and other expenses incurred by them while employed on the business of the company].¹

GENERAL MEETINGS.

7. Two members personally present shall constitute a quorum at general meetings of the company, and any member may demand a poll.²

DIRECTORS' BORROWING POWERS.

8. The directors, without prejudice to their general powers, may in the name and on behalf of the company, and from time to time at their discretion borrow from themselves or from others any sum or sums of money for the purposes of the company, without limit as to amount, and that upon such terms and in such manner as they may think fit.³

NAMES, DESCRIPTIONS, AND ADDRESSES OF SUBSCRIBERS. 4

LEWIS H. RICHARDSON, Manufacturer, Atalanta Mills, Greenock.

H. A. BLOCKMAN, Merchant, 41 Cheapside, London, E.C.

Dated the day of 1919.

Witness to the above signatures—

RICHARD MANGROVE.

Warehouseman,

19 Brighton Crescent, Leith.

¹ It may be desirable to add this bracketed clause as an addition to this Article or as a separate Article. Article 69 of Table A does not authorise the payment of travelling and hotel expenses. See *Company Law and Practice*, p. 455.

²This modifies Articles 51 and 56 of Table A respectively. The quorum under Article 51 is three members, and under Article 56 three members at least must demand a poll. It is obvious that these numbers are inapposite to the majority of private companies.

⁵This Article is in substitution for Article 73 of Table A which places a limit upon the borrowing powers of the directors. See *Company Law and Practice*, p. 461.

⁴ See notes as to execution of Articles by subscribers. Form No. 2, p. 169.

ARTICLES OF ASSOCIATION

FOR

PRIVATE COMPANY—LIMITED BY SHARES.

INCORPORATING TABLE A.¹

Form No. 7.

THE COMPANIES ACTS, 1908 TO 1917.

[PRIVATE] COMPANY LIMITED BY SHARES.

ARTICLES OF ASSOCIATION

OF

LIMITED.

~~CONSTITUTIONAL [or FUNDAMENTAL or PRELIMINARY].~~

1. The company ~~[or inserting name of company]~~ ^{shall be} ~~is estab-~~
lished as a private company in the sense of [or within the
meaning of] section 121 of the Companies (Consolidation) Act,
1908; and the regulations of Table A in the First Schedule to
that Act shall not apply to the Company save and except in so
far as they are expressly incorporated in these Articles.²

2. The number of members of the company (exclusive of
persons who are in the employment of the company and of
persons who, having been formerly in the employment of the
company, were while in such employment and have continued
after the determination of their employment to be members of
the company) shall be limited to fifty; and all transfers which
would, if registered, have the effect of increasing such number
of members beyond fifty (exclusive as aforesaid) shall be invalid,
and shall not be recognised by the directors or entered in the

¹ See General Notes to Forms Nos. 5, 6, and 7, p. 254.

² See notes to Article 1 of Articles for Public Company—Form No. 2,
p. 48, and Articles for Private Company—Form No. 4, p. 190.

register of members; but subject to the proviso that when two or more persons hold one or more shares jointly, they shall, for the purposes of this Article, be regarded as a single member.¹

Form No. 7.

Private
Company.

3. No invitation shall be made to the public to subscribe for any shares or debentures of the company; and the company and its directors, officials, agents, and all others acting on its behalf, are hereby prohibited from making such invitation to the public [and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections 85 and 88 of the Companies (Consolidation) Act, 1908, as may be applicable thereto].²

4. No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.³

Table A—8.

INTERPRETATION.

5. In these Articles, unless the context otherwise requires, expressions defined in the Companies (Consolidation) Act, 1908, or any statutory modification thereof in force during the operation of these Articles, shall have the meanings so defined; and words importing the singular shall include the plural, and *vice versa*; and words importing the masculine gender shall include females; and words importing persons shall include bodies corporate.⁴

Table A—1.

BUSINESS.

6. The directors shall have regard to the restrictions on the commencement of business imposed by section 87 of the Companies (Consolidation) Act, 1908, if, and so far as, those restrictions are binding upon the company.⁵

Table A—2.

¹ Cf. Article 2 of Articles for Private Company—Form No. 4, p. 190.

² The bracketed portion may be omitted. Article 5 of Table A provides for public subscription subject to conditions, but in the case of a Private Company, there can be no public offer of shares. Cf. Article 3 in Articles for Private Company—Form No. 4, p. 191.

³ Cf. cognate Article 4 in Articles for Private Company—Form No. 4, p. 191.

⁴ The marginal references to the corresponding Articles of Table A are inserted merely as a guide to the practitioner in tracing these Articles from which the Articles in this form are taken. Articles 1, 2, 3, and 7 of this Form have no analogous clauses in Table A.

⁵ Cf. Article 4 in Articles for Public Company—Form No. 2, p. 52, and Article 6 in Articles for Private Company—Form No. 4, p. 194.

Form No. 7.

OFFICE.

Private
Company.

7. The registered office of the company shall be in [Glasgow], or at such other place as the directors may from time to time appoint.¹

SHARES.

Table A—3.

8. Subject to the provisions of the Memorandum of Association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine.²

Table A—4.

9. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of [three-fourths] of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class; and to every such separate general meeting the provisions of these Articles relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.³

Table A—6.

10. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the shares held by him and the amount paid up thereon, provided that in respect of shares held jointly by several persons

¹ See notes to Article 10 of Articles for Private Company—Form No. 4, p. 196.

² It is preferable it is thought to make no provisions in the Memorandum, and if any reference is made therein to any special conditions attaching to shares, it should be free from rigidity. See General Notes on Memorandum of Association for Public or Private Company, p. 4, and note to Article 56 of Articles for Public Company—Form No. 2, p. 83.

³ See note to Article 59 of Articles for Public Company—Form No. 2, p. 87, and *cf.* Article 50 in Articles for Private Company—Form No. 4 p. 220.

the company shall not be bound to issue more than one certificate, and delivery of a certificate for any shares to one of several joint holders shall be sufficient delivery to all.¹

Form No. 7.

Private
Company.

11. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity as the directors think fit. Table A—7.

LIEN.

12. The company shall have a lien on every share (not being a fully paid share) and on all dividends payable thereon, for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this Article.² Table A—9.

13. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or bankruptcy to the share.³ Table A—10.

14. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected Table A—11.

¹ See notes to Article 17 in Articles for Public Company—Form No. 2, p. 61.

² See note to Article 41 in Articles for Private Company—Form No. 4, p. 216.

³ Cf. Article 40 in Articles for Public Company—Form No. 2, p. 75.

Form No. 7. by any irregularity or invalidity in the proceedings in reference to the sale.¹

Private
Company.

CALLS ON SHARES.

Table A—12. 15. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.²

Table A—13. 16. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.³

Table A—14. 17. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of £5 per centum per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

Table A—15. 18. The provisions of these Articles as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.⁴

Table A—16. 19. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

Table A—17. 20. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same

¹ *Cf.* Articles 43 and 44 in Articles for Private Company—Form No. 4, p. 217.

² *Cf.* cognate Article 19 in Articles for Public Company—Form No. 2, p. 66.

³ *Cf.* Article 23 in Articles for Public Company—Form No. 2, p. 68.

⁴ *Cf.* Article 24 in Articles for Public Company—Form No. 2, p. 68.

would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, [6] per cent.) as may be agreed upon between the member paying the sum in advance and the directors.¹

Form No. 7.

Private
Company.

TRANSFER AND TRANSMISSION OF SHARES.

21. The [deed of] transfer of shares in the company shall be executed both by the transferor and transferee, (one witness being sufficient in the attestation of their signatures) and the transferor shall be deemed to remain a holder of the shares until the name of the transferee is entered in the register of members in respect thereof.²

Table A—18.

22. Shares in the company shall be transferred in the following form, or in any usual or common form of which the directors shall approve:—

Table A—19.

"I, A B, of _____, in consideration of the sum of £ _____ paid to me by C D, of _____ (hereinafter called "the said transferee") do hereby transfer to the said transferee _____ shares numbered _____ in (*insert name of company*)

_____ to hold unto the said transferee, his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I, the said transferee, do hereby agree to take the said shares subject to the conditions aforesaid.

As witness our hands the _____ day of _____ 1919.

Witness to the signatures of, &c.

"3

23. All transfers of shares of the company shall be subject to the approval and sanction of the directors, and the directors may refuse to recognise or register any transfer without

Table A—20.

¹ See note to Article 26 of Articles for Public Company—Form No. 2, p. 69.

² See notes to Article 43 in Articles for Public Company—Form No. 2, p. 76.

³ See notes to cognate Article 44 in Articles for Public Company—Form No. 2, p. 77.

Form No. 7. assigning any reason for such refusal. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any transfer unless—

Private
Company.

(a) A fee not exceeding two shillings and sixpence is paid to the company in respect thereof, and

(b) The [deed of] transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.¹

Table A—21. 24. The executors or administrators of a deceased sole holder of shares shall be the only persons recognised by the company as having any title to such shares. In the case of shares registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the shares.²

Table A—22. 25. Any person becoming entitled to shares in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the shares or, instead of being registered himself, to make such transfer of the shares as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the shares by the deceased or bankrupt person before the death or bankruptcy.³

Table A—23. 26. A person becoming entitled to any shares by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the shares, except that he shall

¹ See notes to Article 25 of Articles for Private Company—Form No. 4, p. 201.

² See note to Article 46 in Articles for Public Company—Form No. 2, p. 79.

³ Cf. Article 47 in Articles for Public Company—Form No. 2, p. 79.

not, before being registered as a member in respect of the shares, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.¹

Form No. 7.

Private
Company.

FORFEITURE OF SHARES.

27. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.²

Table A—24.

28. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.³

Table A—25.

29. If the requirements of any such notice as aforesaid are not complied with, any shares in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

Table A—26.

30. Forfeited shares may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

Table A—27.

31. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.⁴

Table A—28.

¹ See note to Article 48 in Articles for Public Company—Form No. 2, p. 80.

² Cf. Article 29 in Articles for Private Company—Form No. 4, p. 213.

³ See Article 28 of Articles for Public Company—Form No. 2, p. 70.

⁴ See *Company Law and Practice*, p. 441.

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Company.

Table A—29.

32. A statutory declaration in writing that the declarant is a director of the company, and that shares in the company have been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the shares, and that declaration, and the receipt of the company for the consideration, if any, given for the shares on the sale or disposition thereof shall constitute a good title to the shares, and the person to whom the shares are sold or disposed of shall be registered as the holder of the shares and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the shares.

Table A—30.

33. The provisions of these Articles as to forfeiture shall apply in the case of nonpayment of any sum which, by the terms of issue of shares, becomes payable at a fixed time, whether on account of the amount of the shares or by way of premium, as if the same had been payable by virtue of a call duly made and notified.¹

ALTERATION OF SHARE CAPITAL.

Table A—41.

34. The directors may, with the sanction of an extraordinary resolution of the company, increase the share capital by such sum, divided into shares of such amount, as the resolution shall prescribe.²

Table A—42.

35. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time

¹ As explained in the General Notes to Forms Nos. 5, 6, and 7, the Articles of Table A, viz., Nos. 31 to 40 both inclusive, dealing with conversion of shares into stock and with share warrants are omitted from this Form No. 7.

² See notes under Article 56 of Articles for Public Company—Form No. 2, p. 83, and see Article 45 in Articles for Private Company—Form No. 4, p. 217.

within which the offer, if not accepted, will be deemed to be declined, and, after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.¹

Form No. 7.

Private
Company.

36. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital. Table A—43.

37. The company may, by special resolution— Table A—44.

- (a) Consolidate and divide its share capital into shares of larger amount than its existing shares ;
- (b) By subdivision of its existing shares, or any of them, divide the whole, or any part, of its share capital into shares of smaller amount than is fixed by the Memorandum of Association, subject, nevertheless, to the provisions of paragraph (d) of sub-section (1) of section 41 of the Companies (Consolidation) Act, 1908 :
- (c) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person :
- (d) Reduce its share capital in any manner and with, and subject to, any incident authorised, and consent required, by law.²

GENERAL MEETINGS.

38. The statutory general meeting of the company shall be held within the period required by section 65 of the Companies (Consolidation) Act, 1908.³ Table A—45.

¹ Cf. Article 46 of Articles for Private Company—Form No. 4, p. 218.

² See Articles 60 to 62 of Articles for Public Company—Form No. 2, p. 88, and Article 48 of Articles for Private Company—Form No. 4, p. 219.

³ See Article 58 of Articles for Private Company—Form No. 4, p. 223.

Form No. 7.Private
Company.

Table A—46.

39. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.¹

Table A—47.

40. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

Table A—48.

41. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 66 of the Companies (Consolidation) Act, 1908. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings are to be convened by the directors.²

PROCEEDINGS AT GENERAL MEETING.

Table A—49.

42. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting, and in case of special business, the general nature of that business shall be given in manner herein-after mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under these Articles, entitled to receive such notice from the company; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.³

¹ See note to Article 63 of Articles for Public Company—Form No. 2, p. 90.

² See note to Article 67 of Articles for Public Company—Form No. 2, p. 91, and cf. Article 62 of Articles for Private Company—Form No. 4, p. 224.

³ Cf. Article 63 of Articles for Private Company—Form No. 4, p. 225.

43. All business shall be deemed special that is transacted at **Form No. 7.**
 an extraordinary meeting, and all that is transacted at an
 ordinary meeting, with the exception of sanctioning a dividend,
 the consideration of the accounts, balance sheets and the ordinary
 report of the directors and auditors, the election of directors and
 other officers in the place of those retiring by rotation, and the
 fixing of the remuneration of the auditors.

Table A—50.

Private
Company.

44. No business shall be transacted at any general meeting **Table A—51.**
 unless a quorum of members is present at the time when the
 meeting proceeds to business; save as herein otherwise provided,
 two members personally present shall be a quorum.¹

45. If within half an hour from the time appointed for the **Table A—52.**
 meeting a quorum is not present, the meeting, if convened upon
 the requisition of members, shall be dissolved; in any other case
 it shall stand adjourned to the same day in the next week, at the
 same time and place, and, if at the adjourned meeting a quorum
 is not present within half an hour from the time appointed for
 the meeting, the members present shall be a quorum.²

46. The chairman, if any, of the board of directors shall **Table A—53.**
 preside as chairman at every general meeting of the company.

47. If there is no such chairman, or if at any meeting he is **Table A—54.**
 not present within fifteen minutes after the time appointed for
 holding the meeting or is unwilling to act as chairman, the
 members present shall choose some one of their number to be
 chairman.

48. The chairman may, with the consent of any meeting at **Table A—55.**
 which a quorum is present (and shall if so directed by the meet-
 ing), adjourn the meeting from time to time and from place to
 place, but no business shall be transacted at any adjourned
 meeting other than the business left unfinished at the meeting
 from which the adjournment took place. When a meeting is
 adjourned for ten days or more, notice of the adjourned meeting
 shall be given as in the case of an original meeting. Save as
 aforesaid it shall not be necessary to give any notice of an

¹ The corresponding Article of Table A has "three" for the quorum,
 and cf. Article 65 of Articles for Private Company—Form No. 4, p. 226.

² Cf. Article 66 of Articles for Private Company—Form No. 4, p. 226.

Form No. 7. adjournment or of the business to be transacted at an adjourned meeting.¹
 Private Company.

Table A—56. 49. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by any member, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or lost by a particular majority, and an entry to that effect in the book of the proceedings of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.²

Table A—57. 50. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.³

Table A—58. 51. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

Table A—59. 52. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

VOTES OF MEMBERS.

Table A—60. 53. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.⁴

¹ Cf. Article 69 of Articles for Private Company—Form No. 4, p. 226.

² Under the corresponding Article of Table A the poll has to be demanded by "at least three" members, and cf. Article 70 of Articles for Private Company—Form No. 4, p. 227.

³ See Article 71 of Articles for Private Company—Form No. 4, p. 227.

⁴ See note to Article 83 of Articles for Public Company—Form No. 2, p. 99.

54. In the case of joint holders the vote of a senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.¹

Form No. 7.

Private
Company.

Table A—61.

55. A member of unsound mind may vote, whether on a show of hands or on a poll, by his *curator bonis*, committee, or other person in the nature of a *curator bonis*, and any such *curator bonis*, or other person may, on a poll, vote by proxy.²

Table A—62.

56. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.³

Table A—63.

57. On a poll votes may be given either personally or by proxy.

Table A—64.

58. [The deed or document appointing a *or* A] proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or, if the appointer is a corporation, either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.⁴

Table A—65.

59. [The deed or document appointing a *or* Any] proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting at which the person named in the [deed or document of] proxy proposes to vote, and in default the [deed or document of] proxy shall not be treated as valid.

Table A—66.

¹ See Article 84 of Articles for Public Company—Form No. 2, p. 99, and relative note.

² Cf. Article 75 of Articles for Private Company—Form No. 4, p. 228.

³ See cognate Article 86 in Articles for Public Company—Form No. 2, p. 100.

⁴ See cognate Article 88 of Articles for Public Company—Form No. 2, and notes thereon p. 101.

Form No. 7. 60. A [deed or document appointing a] proxy need not be witnessed and may be in the following form, or in any other form of which the directors shall approve:—

Table A—67.

“ I, _____, of _____, in the county of _____, LIMITED,
being a member of the _____ Limited,
hereby appoint _____, of _____, as my
proxy to vote for me and on my behalf at the
ordinary [*or extraordinary, as the case may be*]
general meeting of the company to be held on the
_____ day of _____, and at any
adjournment thereof.

Signed this _____ day of _____ 1919.”

DIRECTORS.

Table A—68. 61. The number of the directors, until otherwise determined by a general meeting, shall not be less than [three] nor more than [eight]. The first directors shall be:—

and unless otherwise determined two shall be a quorum.¹

Table A—69. 62. The remuneration of the directors shall from time to time be determined by the company in general meeting.²

Table A—70. 63. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 73 of The Companies (Consolidation) Act, 1908.³

POWERS AND DUTIES OF DIRECTORS.

Table A—71. 64. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of

¹ This Article displaces Nos. 68 and 88 of Table A, and see note to Article 84 of Articles for Private Company—Form No. 4, p. 231.

² Frequently this Article is superseded by an Article providing for remuneration as is found in Forms Nos. 2 and 5, pp. 106 and 232.

³ Where the qualification is to be larger, either the necessary alteration will be made, or an Article such as is found in Forms Nos. 2 and 5 may be substituted, and see Article 85 in Articles for Private Company—Form No. 4, p. 231.

the company as are not, by the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, or by these Articles, required to be exercised by the company in general meeting, subject nevertheless to any provision of these Articles, to the provisions of the said Act, and to such directions, not being inconsistent with such provisions, as may be prescribed by the company in general meeting; but no direction made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that direction had not been made.¹

Form No. 7.

Private
Company.

65. The directors may from time to time appoint one or more of their body to the office of managing director or manager, for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not while holding that office be subject to retirement by rotation, or taken into account when determining the rotation of retirement of directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.²

Table A—72.

66. Without prejudice to their general powers, the directors may, in the name and on behalf of the company, and from time to time at their discretion, borrow from themselves or from others, any sum or sums of money for the purposes of the company, without limit as to amount, and that upon such terms and in such manner as they may think fit.³

Table A—73.

67. The directors shall duly comply with the provisions of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, and in

Table A—74.

¹ See note to Article 95 of Articles for Private Company—Form No. 4, p. 235.

² See notes relative to Article 97 of Articles for Private Company—Form No. 4, p. 240.

³ Article 73 of Table A which limits the borrowing powers of the directors is generally excluded, and an Article in this general form is usually adopted. See notes to Article 51 of Articles for Private Company—Form No. 4, p. 222.

Form No. 7. particular with the provisions in regard to the registration of the particulars of bonds, mortgages and charges affecting the property and assets of the company, or created by it, to keeping a register of the directors, to sending to the Registrar of Companies an annual list of members, a summary of particulars relating thereto, notice of any consolidation or increase of share capital, or conversion of shares into stock, copies of special resolutions, and a copy of the register of directors and notifications of any changes therein.¹

Table A—75. 68. The directors shall cause minutes to be made in books provided for the purpose—

- (a) Of all appointments of officers made by the directors;
- (b) Of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) Of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.²

THE SEAL.

Table A—76. 69. The seal of the company shall not be affixed to any deed except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every deed to which the seal of the company is so affixed in their presence.³

DISQUALIFICATIONS OF DIRECTORS.

Table A—77. 70. The office of director shall be vacated, if the director—

- (a) Ceases to be a director by virtue of section 73 of the Companies (Consolidation) Act, 1908; or

¹ See Article 100 of Articles for Public Company—Form No. 2, p. 117.

² See Articles 113 and 114 and notes thereto in Articles for Private Company—Form No. 4, p. 243.

³ See Article 9 in Articles for Private Company—Form No. 4, p. 196.

- (b) Holds any other office of profit under the company except that of managing director or manager; or **Form No. 7.**
Private Company.
- (c) Becomes bankrupt; or
- (d) Becomes of unsound mind; or
- (e) Is concerned or participates in the profits of any contract with the company:

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director; but a director shall not vote in respect of any such contract or work, and if he does so vote, his vote shall not be counted.¹

ROTATION OF DIRECTORS.

71. At the first ordinary meeting of the company the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one-third, shall retire from office.² **Table A—78.**

72. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot. **Table A—79.**

73. A retiring director shall be eligible for re-election. **Table A—80.**

74. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto. **Table A—81.**

75. If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their

¹ Cf. Articles 93 and 94 in Articles for Private Company—Form No. 4, pp. 233-4.

² Cf. Article 103 of Articles for Public Company—Form No. 2, p. 121.

Form No. 7. places filled up, shall be deemed to have been re-elected at the adjourned meeting.¹

Private
Company.

Table A—83. 76. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

Table A—84. 77. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.²

Table A—85. 78. The directors shall have power at any time, and from time to time, to appoint a person as an additional director, who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

Table A—86. 79. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; and the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.³

PROCEEDINGS OF DIRECTORS.

Table A—87. 80. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

¹ It is open to the shareholders in general meeting to re-elect one who has vacated office by reason, *e.g.* of bankruptcy. It is thought that this Article providing for implied re-election is intended to refer to vacation of office by retirement only in the sense of Article 72.

² See Article 108 in Articles for Public Company—Form No. 2, p. 123.

³ See note to Article 111 of Articles for Public Company—Form No. 2, p. 124.

81. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.¹

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Private
Company.

Table A—89.

82. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

Table A—90.

83. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any directions that may be imposed on them by the directors.

Table A—91.

84. A committee may elect a chairman of their meetings; and if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

Table A—92.

85. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

Table A—93.

86. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.²

Table A—94.

¹ Article 88 of Table A as to the quorum of directors is not incorporated on account of the insertion of Article 61. See Articles 112 to 114 of Articles for Public Company—Form No. 2, p. 124.

² Cf. Article 122 with relative note in Articles for Public Company—Form No. 2, p. 127.

Form No. 7.**DIVIDENDS AND RESERVE.**

Private
Company.

87. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.¹

Table A—95.

Table A—96.

88. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

Table A—97.

89. No dividend shall be paid otherwise than out of profits.²

Table A—98.

90. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this Article as paid on the share.³

Table A—99.

91. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application such sums may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.⁴

Table A—100.

92. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend payable on the share.

¹ See Dividend series of Articles 135 *et seq.* in Articles for Public Company—Form No. 2, p. 140.

² See Article 138 in Articles for Public Company—Form No. 2, p. 141.

³ See Article 139 in Articles of Public Company—Form No. 2, p. 141.

⁴ See Reserve Fund Articles in Articles for Public Company—Form No. 2, p. 148, and *cf.* Articles 124 and 125 in Articles for Private Company—Form No. 4, p. 246.

93. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein. **Form No. 7.**
 Private
 Company.

Table A—101.

94. No dividend shall bear interest against the company.

Table A—102.

ACCOUNTS.

95. The directors shall cause true accounts to be kept—

Table A—103.

Of all sums of money received and expended by the company and the matter in respect of which such receipt and expenditure take place, and

Of the assets and liabilities of the company.

96. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors. **Table A—104.**

97. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members, not being directors, and no member, not being a director, shall have any right of inspecting any account or book or document of the company except under a statutory right or as authorised by the directors or by the company in general meeting. **Table A—105.**

98. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting. **Table A—106.**

99. A balance sheet shall be made out in every year and laid before the company in general meeting to a date not more than six months before such meeting, and it shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund. **Table A—107.**

Form No. 7. 100. A copy of the balance sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.¹

Private Company.

TableA—108.

AUDIT.

TableA—109. 101. Auditors shall be appointed and their duties regulated in accordance with sections 112 and 113 of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force.²

NOTICES.

TableA—110. 102. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him; and where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.³

TableA—111 103. If a member has no registered address in the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, the office of the company in that case shall be deemed to be his registered address in the United Kingdom and a notice addressed to him thereat [*or* and advertised in a newspaper circulating in the neighbourhood of the registered office of the company] shall be deemed to be duly given to him on the day on which the notice is so addressed [*or* the advertisement appears.]⁴

¹The note to Article 153 of Articles for Public Company—Form No. 2, p. 155, should be kept in view in the adjustment of Articles 98 to 100. Private Companies do not desire as a rule to circulate their trading accounts for the benefit of third parties. See *Palmer's Company Precedents, Part I, Eleventh Edition*, p. 996, and *cf.* note to Article 35 in Articles for Private Company—Form No. 5, p. 284.

²See Audit series of Articles for Private Company—Form No. 4, p. 248.

³*Cf.* Article 141 in Articles for Private Company—Form No. 4, p. 250.

⁴*Cf.* Article 142 in Articles for Private Company—Form No. 4, p. 250.

104. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder entered first in the register in respect of the share.

Form No. 7.

Private
Company.

Table A—112.

105. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, in the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

Table A—113.

106. Notice of every general meeting shall be given in the same manner hereinbefore authorised to (a) every member of the company [except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them,] and also to (b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting, and no other persons shall be entitled to receive notices of general meetings.¹

Table A—114.

NAMES, DESCRIPTIONS, AND ADDRESSES OF SUBSCRIBERS.

ROBERT L. HOUSEMAN, Merchant, Slatefield, Edinburgh.

RACHEL THOMSON, Typist, 99 Princes Street, Edinburgh.

Dated the day of 1919.

Witness to the above signatures—

SARAH WILLIAMSON,
Teacher,
39 Royal Promenade, Leith.

¹ The reference in Article 114 of Table A to share warrants is here omitted in respect of the exclusion of the Articles 35 to 40 of Table A dealing with share warrants. The Notice series of Articles 165 *et seq.* in Articles for Public Companies—Form No. 2, p. 158, may be usefully referred to. See General Notes, p. 255, as to the omission in this Form of winding-up Articles. Such Articles are given in Form No. 2, p. 167, *et seq.*

SECTION III.

UNLIMITED COMPANIES.

GENERAL NOTES.

Memorandum of Associa- tion.

It has been deemed unnecessary to give any special form dealing with the Memorandum and Articles of Association appropriate to companies registered without any limitation of their liability. It may be taken, generally, that their constitution follows the main lines of other companies. In the Memorandum, there does not need to be any share capital clause, but it is convenient to include it. See section 5 of the Act and Form D in the Third Schedule of the Act. The amount of the share capital and its division into shares for the working purposes of the company, whether specified in the Memorandum or not, must be stated in any event in the Articles. See section 10 of the Act. The Articles may be framed upon the basis of Table A, with or without modifications or otherwise, as the members of the particular company desire.

Articles of Association.

Advantages.

It is, perhaps, not very well known that there are advantages secured by the conversion of businesses in many cases into companies with unlimited liability that may appear to outweigh any disadvantages arising out of questions as affected by income tax, super-tax, or excess profits duty upon such conversion. In regard to the incidence of these matters, it is probably judicious to enlist the services of expert accountants. To the outside world no indication of conversion need be given of incorporation and registration under the Acts beyond what is necessary to comply with the Companies (Particulars as to Directors) Act, 1917. The word "Limited" forms and can form no part of their trading name. The main advantage, however, rests in the creation of transferable share interests in substitution for untransferable partnership interests. Another advantage is found in the facility with which the business of a deceased proprietor may be thus realised through the transference or sale of its assets and goodwill without involving the business being actually placed on the market. Its continuity is preserved. The interests of beneficiaries under the testamentary disposition of the late proprietor by this means are

fixed in such a way that no beneficiary, against the will of the majority of the shareholders, can injure the business by insisting upon its enforced sale for the purpose of paying out his interest. An unlimited company may be also conveniently formed where it is desired to acquire a business without intimation to the public of the change of ownership by any alteration of the name.

General
Notes.

In the recent formation of unlimited companies, private companies are predominant. These unlimited companies can be converted at any time into companies with limited liability. See section 57 of the Act. Scottish banks formed under old co-partnership deeds were registered under the Companies Act, 1862, as companies with unlimited liability, and subsequently they re-registered with limited liability. Other companies with constitutions as archaic as those of these banks have also registered as unlimited and thereafter registered as limited. These cases relate more or less to public companies with marketable shares, and such companies have taken advantage of the statutory provisions by which they have substituted the modern Memorandum and Articles of Association for the old constitution, whether in the shape of a co-partnership deed, private Act of Parliament, or otherwise.

Private
Companies.

Finally, the initial expense of forming an unlimited liability company does not include the payment of any share capital duty. Such capital duty is only exigible when the company is re-registered with limited liability.

Share capital
duty.

SECTION IV.

MEMORANDUM OF ASSOCIATION.

NON-PROFIT ASSOCIATIONS LIMITED BY GUARANTEE —REGISTERED WITHOUT “LIMITED” UNDER BOARD OF TRADE LICENCE.

Form No. 8.

GENERAL NOTES.

Non-profit
Associations :
nature.

NON-PROFIT companies generally disclaim the title of company as suggestive of dividends and assume the style of a named association, corporation or society, or simply designate themselves as a particular fund, trust, academy, school, chamber, and so forth, in consonance with the object of their formation, without the addition directly indicative of a company constitution. In terms of section 20 of the Act that object must be based upon altruistic lines for the promotion of “commerce,” (which, in view of the sectional rubric, is somewhat curiously first mentioned,) “art, science, religion, charity, or any other useful object.” Practically this means any useful lawful object. The doctrine of *ejusdem generis* does not apply (*Stuart v. Ogilvie*, 1914, S.C. 888). The 19th section is somewhat differently worded from the 20th section in reference to the restriction upon charitable and other companies, “not involving the acquisition of gain by the company or by its individual members” from holding more than two acres of land without the licence of the Board of Trade. In substance there appears to be no difference intended by these sections. This licence is only issued by the Board after incorporation of the association. The 20th section requires that all profits should be applied in aid of such objects, and that payment of dividends should be prohibited. Upon these conditions such companies are licensed by the Board of Trade to be registered as companies with limited liability without the word “limited.” This dispensation is of great advantage, because associations so formed obtain all the privileges of limited liability companies, and many public-spirited bodies formed for benevolent, educational, and other purposes have applied for and obtained the requisite licence. Indeed, it is stated that incorporation by this means has almost displaced incorporation by Royal Charter or Letters Patent; *Palmer’s*

Company Precedents, I. 500. It is still, however, desirable in certain cases to select the method of Royal Charter, *e.g.*, The Zoological Society of Scotland. Since 1910, the following among other associations have been registered in Scotland by licence under section 20, namely, Glasgow Eye Infirmary, Scottish International Aviation, North of Scotland College of Agriculture, Scottish Marine Biological Association, Glasgow and West of Scotland Commercial College (Incorporated), The Galloway Cattle Society of Great Britain and Ireland, St. George's School for Girls (Incorporated), and the Scottish Veterans' Garden City Association (Incorporated).

General
Notes.

Memorandum
of Non-profit
Associations.

The Board of Trade, in terms of section 20 of the Act, settle the conditions upon which the licence is granted, and the insertion of such conditions may be made in the Memorandum and Articles of Association, or in one or other of such documents. These conditions are invariably placed in the Memorandum. The draft Form issued by the Board of Trade shows the conditions generally insisted upon. Some of these seem inapposite to a Scottish association, and this consideration has been repeatedly pressed upon the Board of Trade but seldom with acceptance. Conditions appropriate to English associations should be omitted in the case of Scottish companies. The Board of Trade, in the event of any disregard of legal restrictions by such associations, have the remedy of revoking the licence, and this remedy ought to be a sufficient protection so as to make it unnecessary that the Memorandum of a Scottish association should contain conditions with no practical purpose.

Board of
Trade :
functions.

Form No. 8 is an example of the Memorandum for Associations of this class as sanctioned by the Board of Trade according to present practice. Appendix A to this Form gives illustrations of other "Objects" clauses in such a Memorandum as deduced from the instances of associations registered both in Scotland and in England within recent years. Appendix B supplies some examples of organic or fundamental regulations which the promoters of some of these associations have chosen to insert in the Memorandum in place of the Articles. This course may have some merit in particular cases. But the preferable course appears to be to place these regulations in the Articles. The Articles can be altered, subject to the approval of the Board of Trade, when circumstances call for change. Appendix C is a list of the more or less general and executive clauses found in the Memorandum of this description, and the practitioner can use his discretion in selecting all or any of them for the Memorandum of any particular association he is called upon to draft.

Memorandum
forms.

Associations taking the benefit of the licence are now invariably companies limited by guarantee without any share capital. This saves share capital duty, and in such cases where the payment of dividends is prohibited, a share capital is otherwise out of place. The maximum fee, where the membership is declared to be unlimited, is £20.

Share capital
duty saved.

General
Notes.Memorandum
of Non-profit
Associations.Board of
Trade:
discretion
and practice.

The discretion of the Board of Trade as to the issue of a licence is absolute, and no reasons for refusal are usually stated. The practice of the Board of Trade is to submit the proposed Memorandum and Articles of Association to counsel for the Board, and to transmit the same as revised by him to the applicant's agents with a request for advertisement of the application so as to give an opportunity to interested persons to object. After this advertisement has been made, the Board desire copies of the newspaper containing it to be forwarded to the Department with three prints of the Memorandum and Articles as revised. The type ought to be kept standing until the final approval of the Board is obtained. No variations should be made on the settled draft without the previous approval of the Board. Objectors are heard, and all meetings generally in reference to the adjustment of the documents take place in London. See *Company Law and Practice*, p. 35, and the regulations of the Board of Trade, issued on application by the Comptroller of the Companies' Department. These regulations are printed in the Appendix, p. 431. It is deemed unnecessary to print the draft Forms of Memorandum and Articles appended to these regulations in view of Form No. 8, and the explanatory notes thereon. The general observations in the Prefatory or General Notes to the Memorandum of Association for Public or Private Companies limited by shares—Form No. 1 and in the particular Notes appended to that Form, apply with equal force to many of the "objects" or "powers" found in the Memorandum of Associations under consideration.

Compliance:
Section 87 of
1908 Act.

It seems an overlook in the Act to require in the case of such companies compliance with section 87 of the Act, by lodging prior to registration the statutory declaration—Form 44a—to the effect that the provisions thereof in regard to payment of shares upon the minimum subscription and the qualification shares of directors, and also the statutory statement in lieu of a prospectus—Form 55. Even private companies are expressly exempted from such a necessity, and although it is obvious that the section has no application to the class of association here dealt with, the Board of Trade, because of no exemption, insist upon such compliance. It is an empty and idle formality. The Board of Trade also insist, with some reason, upon the production of Form 42—the consent of managers, &c., to act, and of Form 43—the list of consenting managers referred to in section 72 of the Act, and of Form 9A under section 2 (1) of the Companies (Particulars as to Directors) Act, 1917. Section 72 is intended to deal only with share holding companies. The Registrar, with the approval of the Board of Trade, will accept consents on several forms where it is inconvenient to get Form 42 signed by all the parties, and for the purposes of stamping will treat them as one document.

The following is the form of advertisement issued to applicants in draft printed form as approved by the Board of Trade and followed in a recent Scottish application :—

General
Notes.

Memorandum
of Non-profit
Associations.

“APPLICATION FOR A LICENCE OF THE BOARD OF TRADE.

Advertise-
ment of Appli-
cation for
Licence.

“Notice is hereby given, that in pursuance of the 20th section of the Companies (Consolidation) Act, 1908, application has been made to the Board of Trade for a Licence directing an Association about to be formed under the name of _____ to be registered without the addition of the word “Limited” to its name. The objects for which the Association is proposed to be established are—(*Here set out the leading objects*). The other objects of the Association are set out *in extenso* in the Memorandum of Association, a copy of which may be inspected at the office of (*name and address of solicitor*). Notice is hereby further given, that any person, company, or corporation objecting to this application may bring such objection before the Board of Trade on or before the _____ day of _____ next, by a letter addressed to the Comptroller of the Companies Department, Board of Trade, 55 Whitehall, London, S.W.

“Dated this _____ day of _____ 1919.

(Signature and Address of)

“ _____ , Secretary.”

The draft printed form of advertisement as issued by the Board contemplates signature by the “Secretary (*or* Agent),” but it is frequently signed by the Solicitors acting for the Association, adding to their signature “Solicitors and Agents,” or “Solicitors to [*or* for] the _____.” The Board direct that 14 days, or 15 days if the 14th be a Sunday, should intervene between the date of the newspaper containing the last insertion of the advertisement, and the date assigned for hearing objections. The advertisement is usually published once in each of two successive weeks in a daily newspaper circulating in the district of the society’s operations.

Objections :
Hearing.

The form of Licence is in these terms—

“WHEREAS it has been proved to the Board of Trade that the _____, which is about to be registered under the Companies Acts, 1908 to 1917, as an Association limited by guarantee, is formed for the purpose of promoting objects of the nature contemplated by the 20th section of the Companies (Consolidation) Act, 1908, and that it is the intention of the said Association that the income and property of the Association, whence-soever derived, shall be applied solely towards the promotion of the

Licence :
Form.

Form No. 8.

Non-profit
Company.

agents for the sale of such articles, and to pay the blind workers such salaries or wages as may be deemed right.

- (9) To buy, feu, lease, rent, hire, or otherwise acquire any heritable or moveable property and any rights or privileges necessary or convenient for the purposes of the Association or its work, subject to the Association procuring any licence or consent necessary by reason of the character of the association or of its work.¹
- (10) To sell, feu, excamb, lease, dispose of, turn to account, or otherwise deal with all or any part of the assets and rights of the Association, and to borrow or raise money at interest on the issue of, or upon bonds and dispositions in security, debentures, debenture stock, or other obligations or securities of the Association, or otherwise in such manner as may be expedient, subject to the Association procuring any licence or consent necessary by reason of the nature of the Association or of its work.¹
- (11) To invest the funds of the Association in any security in which gratuitous trustees are empowered by the law of Scotland to invest trust funds, and from time to time to realise the same as may be deemed expedient.
- (12) To do generally all such other lawful [acts, deeds, and] things as [in the opinion of the executive] [or the council] are incidental or conducive to the attainment of the above objects.²

Provided that the Association shall not support with its funds any object or endeavour to impose on or procure to be observed by its members or others any regulation, restriction, or condition which, if an object of the Association, would make it a trade union;³

¹The qualification may be expressed thus—"so far as the law or the licence of the Board of Trade may from time to time allow."

²The Board of Trade have refused to pass this clause with the words in brackets as to the opinion of the executive or council.

³It will be seen from the Draft Memorandum issued by the Board of Trade that this proviso is part of its stereotyped form, and while it would seem to be unnecessary, the Board of Trade do not sanction its omission.

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Provided also that in case the Association shall take or hold any property subject to the jurisdiction of (the Charity Commissioners for England and Wales or the Board of Education) [*or any competent educational or charitable authority*] the Association shall not sell, mortgage, charge, or lease the same without such authority, approval, or consent as may be required by law, and as regards any such property, the governors [*or council, managers, or trustees, as the case may be*] of the Association shall be chargeable for such property as may come into their hands, and shall be answerable and accountable for their own acts, receipts, neglects, and defaults, and for the due administration of such property in the same manner and to the same extent as they would as such managers or trustees have been if no incorporation had been effected, and the incorporation of the Association shall not diminish or impair any control or authority exerciseable by (the Chancery Division, the Charity Commissioners, or the Board of Education) [*or the Court of Session, or other, the Court or authority having jurisdiction in the matter*] over such managers or trustees, but they shall, as regards any such property, be subject jointly and separately to such control or authority as if the Association were not incorporated. In case the Association shall take or hold any property which may be subject to any trusts, the Association shall only deal with the same in such manner as allowed by law having regard to such trusts.¹

¹ This part of the proviso is not appropriate to a Scottish association. But as the Board of Trade regard the adjustment of the Memorandum generally from the standpoint of the English barrister who settles the draft in their behalf, it is difficult to get the reference to the Charity Commissioners, &c., in England deleted. This explains why so many Memoranda of Scottish associations contain the clause in the same terms practically as the Board of Trade's Draft Form. The Board of Trade, however, have at least in some cases modified their practice so as to make the Memorandum more in accordance with Scottish views. There is no reason why the Board of Trade should not always do so. The modification referred to is indicated in the clause in this Form by substituting the bracketed portions for the portions within parentheses. It may be varied by leaving in the reference to the English statutory bodies "and adding" or any "authority having corresponding jurisdiction in Scotland." It is preferable, however, to omit all reference to the English Charity Commissioners, &c. Where there are to be no trustees the reference to them may be omitted. It seems unnecessary to provide that the executive members or trustees shall be chargeable under the proviso only "during their respective terms of office," but this implied qualification has been passed. The last sentence comes into the clause somewhat inaptly, and appears to be plainly

Form No. 8.Non-profit
Company.3. The objects for which the Association¹ is established are—

1. To provide elementary, technical, and higher education for blind persons, instruction of blind persons in suitable handicrafts, trades, and professions, especially with the view of making them self-supporting, wholly or partially, and to provide such persons with tools or equipment for their trade or employment, and to find employment for past and present pupils of the Association¹ in professional, commercial, or industrial undertakings.
- (2) To take over and carry on in continuity the work now being done by the unincorporated society known as The Society, formed for teaching the blind to read and for training them in industrial occupations at their present school, workshops, and other premises situated in .
- (3) To take over the whole assets and liabilities of the said society, and for that purpose to take such steps and execute such deeds as will vest such assets in the Association or in trustees therefor.
- (4) To maintain the said school, workshops, and premises in foresaid, and to erect, provide, and equip such additional accommodation as may be deemed necessary there or elsewhere, and to alter and improve all such premises, whether existing or otherwise, and to provide all equipment required in connection therewith.
- (5) To manage, control, administer, and govern the school, workshops, and premises of the Association in every respect as the Association may think fit, and without prejudice to all the powers express or implied of the Association to determine from time to time the conditions for the selection or election of pupils, in regard to age on admission, fees payable by them, length of their curriculum, and regulations for their conduct and discipline and otherwise; to differentiate in the application of all or any of such conditions in the case of particular pupils; to employ and prescribe the curriculum of the whole

¹ See Footnote (3) on p. 323.

staff, teaching, and otherwise of the school, work-shops, and premises foresaid; to fix their remuneration, duties, and terms of their engagement or employment; and to dismiss them.

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- (6) To investigate new methods of teaching the blind, and new avenues of profitable work for the blind, and generally any theoretical or practical method of alleviating the misfortune of blindness, to put such into practice, and to co-operate with other associations or individuals interested in such or the like matters for any such purposes.
- (7) To fulfil and carry out, in so far as thought fit, any regulations, conditions, or provisions whatsoever for the purpose of enabling the Association to receive any contributions, donations, grants, subscriptions or other benefits of any description from the Exchequer, the Board of Education, any Local or other Authority, or any person, or corporation whatsoever in respect of the work of the Association, so long as such regulations, conditions, or provisions do not involve, expressly or impliedly, any delegation by the Association of its absolute control and administration of its school, workshops, and premises foresaid or of its work generally, and to accept all such benefits and generally to receive and accept money and property of every description (including land, but subject to the provisions of section 19 of the Companies (Consolidation) Act, 1908) for, or in furtherance of, the objects of the Association from the general public, public meetings, entertainments, sales of work, gifts, donations, subscriptions, endowments, legacies, or otherwise, with power to spend money in advertisements, appeals, and otherwise for such purpose.
- (8) To carry on the business of manufacturers and importers and exporters of, and wholesale and retail dealers in, all kinds of articles made or partially made preferably by blind persons, and that irrespective of profit being derived therefrom, and to establish factories and workshops for that purpose, and to open shops or other premises, and to appoint

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agents for the sale of such articles, and to pay the blind workers such salaries or wages as may be deemed right.

- (9) To buy, feu, lease, rent, hire, or otherwise acquire any heritable or moveable property and any rights or privileges necessary or convenient for the purposes of the Association or its work, subject to the Association procuring any licence or consent necessary by reason of the character of the association or of its work.¹
- (10) To sell, feu, excamb, lease, dispose of, turn to account, or otherwise deal with all or any part of the assets and rights of the Association, and to borrow or raise money at interest on the issue of, or upon bonds and dispositions in security, debentures, debenture stock, or other obligations or securities of the Association, or otherwise in such manner as may be expedient, subject to the Association procuring any licence or consent necessary by reason of the nature of the Association or of its work.¹
- (11) To invest the funds of the Association in any security in which gratuitous trustees are empowered by the law of Scotland to invest trust funds, and from time to time to realise the same as may be deemed expedient.
- (12) To do generally all such other lawful [acts, deeds, and] things as [in the opinion of the executive] [or the council] are incidental or conducive to the attainment of the above objects.²

Provided that the Association shall not support with its funds any object or endeavour to impose on or procure to be observed by its members or others any regulation, restriction, or condition which, if an object of the Association, would make it a trade union;³

¹The qualification may be expressed thus—"so far as the law or the licence of the Board of Trade may from time to time allow."

²The Board of Trade have refused to pass this clause with the words in brackets as to the opinion of the executive or council.

³It will be seen from the Draft Memorandum issued by the Board of Trade that this proviso is part of its stereotyped form, and while it would seem to be unnecessary, the Board of Trade do not sanction its omission.

Provided also that in case the Association shall take or hold any property subject to the jurisdiction of (the Charity Commissioners for England and Wales or the Board of Education) [*or any competent educational or charitable authority*] the Association shall not sell, mortgage, charge, or lease the same without such authority, approval, or consent as may be required by law, and as regards any such property, the governors [*or council, managers, or trustees, as the case may be*] of the Association shall be chargeable for such property as may come into their hands, and shall be answerable and accountable for their own acts, receipts, neglects, and defaults, and for the due administration of such property in the same manner and to the same extent as they would as such managers or trustees have been if no incorporation had been effected, and the incorporation of the Association shall not diminish or impair any control or authority exerciseable by (the Chancery Division, the Charity Commissioners, or the Board of Education) [*or the Court of Session, or other, the Court or authority having jurisdiction in the matter*] over such managers or trustees, but they shall, as regards any such property, be subject jointly and separately to such control or authority as if the Association were not incorporated. In case the Association shall take or hold any property which may be subject to any trusts, the Association shall only deal with the same in such manner as allowed by law having regard to such trusts.¹

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¹ This part of the proviso is not appropriate to a Scottish association. But as the Board of Trade regard the adjustment of the Memorandum generally from the standpoint of the English barrister who settles the draft in their behalf, it is difficult to get the reference to the Charity Commissioners, &c., in England deleted. This explains why so many Memoranda of Scottish associations contain the clause in the same terms practically as the Board of Trade's Draft Form. The Board of Trade, however, have at least in some cases modified their practice so as to make the Memorandum more in accordance with Scottish views. There is no reason why the Board of Trade should not always do so. The modification referred to is indicated in the clause in this Form by substituting the bracketed portions for the portions within parentheses. It may be varied by leaving in the reference to the English statutory bodies "and adding" or any "authority having corresponding jurisdiction in Scotland." It is preferable, however, to omit all reference to the English Charity Commissioners, &c. Where there are to be no trustees the reference to them may be omitted. It seems unnecessary to provide that the executive members or trustees shall be chargeable under the proviso only "during their respective terms of office," but this implied qualification has been passed. The last sentence comes into the clause somewhat inaptly, and appears to be plainly

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4. The income and property of the Association, whencesoever derived, shall be applied solely towards the promotion of the objects of the Association as set forth in this Memorandum of Association; and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise howsoever by way of profit, to the members of the Association;

Provided that nothing herein shall prevent the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Association, or to any member of the Association, in return for any services actually rendered to the Association, nor prevent the payment of interest at a rate not exceeding 5 per cent. per annum on money lent, or reasonable and proper rent for premises demised or let by any member to the Association; but so that no member of the council of management or governing body of the Association [*or* of any committee appointed by the council or governing body] shall be appointed to any salaried office of the Association, or any office of the Association paid by fees, and that no remuneration or other benefit in money or money's worth shall be given by the Association to any member of such council or governing body [*or* of such committee] except repayment of out-of-pocket expenses and interest at the rate aforesaid on money lent, or reasonable and proper rent for premises demised and let to the Association; provided that the provision last aforesaid shall not apply to any railway, gas, electric lighting, water, or cable company of which a member of the council of management or governing body may be a member, or any other company in which such member shall not hold more than one hundredth part of the capital, and such member shall not be bound to account for any share of profits he may receive in respect of any such payment.¹

superfluous; but the Board of Trade insist upon its retention. It is unfortunate that the Board of Trade are not advised by Scottish counsel *e.g.* by either of the Crown Law Officers in Scotland or their Junior Counsel in reference to the provisions of such a Memorandum for a company incorporated in Scotland.

¹The Board of Trade pass the Memorandum with variations upon this clause according to circumstances. For example, in the case of a hospital, the proviso as regards remuneration may be phrased so as to read—"By way of a reasonable and proper endowment, premium, pension, honorarium, or salary to any medical officer, secretary, cashier, superintendent, matron, nurse, officer, or servant, or any one *bona fide*

5. No addition, alteration, or amendment shall be made to or in the regulations contained in the Articles of Association for the time being in force unless the same shall have been previously submitted to and approved by the Board of Trade.

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6. The fourth and fifth paragraphs of this Memorandum contain conditions on which a licence is granted by the Board of Trade to the Association in pursuance of section 20 of The Companies (Consolidation) Act, 1908.¹

employed by the association notwithstanding that they may be members thereof." Power may also be reserved to the association "to deal in the ordinary course of trade or business with the members of the association." The Board of Trade insist upon the proviso to this clause, making it clear that no director or governor can be appointed to any salaried position, and the clause may provide "and that if any director [or governor as the case may be] contravenes this clause, he shall be disqualified to continue to act as a director or governor [or cease *ipso facto* to be a member of the council or governing body]." In the case of an association for scientific investigation employing examiner and teachers, the proviso has been modified by a declaration at the end to the effect "that the prohibitions in this clause shall not apply to any remuneration to any member of the council or governing body who may be acting as examiner or teacher on behalf of the association, and he may receive and retain such remuneration in respect of his office; provided that he shall not vote on any resolution with respect to the appointment to such office or remuneration to be paid in respect thereof; provided also that not more than four members of the council or governing body shall at any one time receive remuneration as examiners or teachers." It might have been difficult in the particular case to get the services of such examiners as managers or governors if the receipt of examining fees had disqualified for a seat on the council. Where the association intends to disseminate literature, "the gratuitous distribution among or sale at a discount to members of the association of any books, magazines, pamphlets, or other publications relating to all or any of the objects of the association" may be reserved. Again, provision may be made in addition to disqualification that the liability of any member acting against the prohibitions of the clause proper or of the provisoes shall be unlimited, but it is not common to insert such a penalty.

¹ This clause is practically invariable as a consequence of clauses 4 and 5. It does not seem to be exhaustive in as much as the other clauses contain conditions in the absence of which no licence for registration will be granted. But once the style of this Memorandum has been settled for the Board of Trade, it appears, as is obvious from notes on the other clauses, that rigid adherence is expected to be maintained. Occasionally, either before or after this sixth clause, a clause is inserted dealing with certain cardinal regulations when it is desired to permanently crystallise these in the Memorandum as a distinctive feature or otherwise of the association. See Appendix B to this Form under reference to the General Notes.

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7. The liability of members is limited.¹

8. Every member of the Association undertakes to contribute to the assets of the Association in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Association contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributors amongst themselves, such amount as may be required not exceeding pounds.¹

9. If upon the winding up or dissolution of the Association there remains after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid or distributed among the members of the Association, but shall be given or transferred to some other institution or institutions, having objects similar to the objects of the Association, and which shall prohibit the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on the Association under or by virtue of clause 4 hereof, and in such proportions as shall be determined by the members of the Association at or before the time of dissolution and in default thereof, then to such other institution or institutions as aforesaid, and in such proportions as shall be determined by the Secretary for Scotland, and if, and so far as effect cannot be given to such provision, then to some charitable object² [or for the promotion of research or education in whatever manner may be determined on as aforesaid].²

¹ Clauses 7 and 8 are identical with clauses 4 and 5 in Form B of the Third Schedule to the Act. Ten pounds is the limit of liability inserted in that Form. It is rare to find a larger sum than one pound inserted. One pound may be sufficient if the membership of the association is very large, but in the event of liquidation a limit of one pound will not generally go far to meet the charges of winding up or the liabilities where the assets do not meet them. It is taken for granted in most cases that the association is established upon a substantial basis, and it is seldom that such associations are wound up as insolvent concerns. Such considerations and the reluctance of members to extend their liability without any profitable return from the association no doubt explain the almost invariable one pound limit. For associations formed for non-profit schemes, a share holding is not appropriate, and a Private Company, looking to section 121 of the Act, is also not appropriate in the case of such associations.

² According to the Board of Trade Draft Form, the disposal of the property of the association in default of the members determining the same is left to "such judge of the High Court of Justice as may have or acquire jurisdiction in the matter." The promoters of some Scottish

10. True accounts shall be kept of the sums of money received and expended by the Association, and the matter in respect of which such receipts and expenditure take place, and of the property, credits and liabilities of the Association, and, subject to any reasonable restrictions as to the time and manner of inspecting the same, that may be imposed in accordance with the regulations for the time being, shall be open to the inspection of members. Once at least in every year the accounts of the Association shall be examined, and the correctness of the balance sheet ascertained by one or more properly qualified auditor or auditors.¹

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Company.

WE, the several persons² whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this Memorandum of Association.

NAMES, ADDRESSES, AND DESCRIPTIONS OF SUBSCRIBERS.

H. R. THORNTON, of No. 7 Russell Terrace, Edinburgh, Merchant.
 ALICE MUIRHEAD, of No. 9 East Fettes Avenue, Edinburgh, Spinster.
 JOHN MACDONALD, of No. 31 Northumberland Street, Edinburgh, Writer to the Signet.
 ROBERT H. SIMPSON, of No. 34 George Square, Edinburgh, Merchant.
 MARY R. WILSON, of No. 9 Coltbridge Terrace, Edinburgh, Spinster.
 ALEXANDER MURDOCH, of No. 116 Princes Street, Edinburgh, Printer.
 CHARLES H. RICHARDSON, of No. 38 Hill Street, Edinburgh, Architect.

Dated the Eleventh day of August, Nineteen hundred and nineteen.

Witness to the above signatures—

R. C. ANDERSON,
Solicitor Supreme Courts.
 98 George Street, Edinburgh.

associations have acquiesced in this. Where the inappropriateness of English judges dealing with the affairs of Scottish associations is pressed, the Board of Trade yield in this matter, and have approved of "the Court of Session," or of the phrase, which is not so apposite, "such judge or judges of such Court as may then have jurisdiction in the matter." It is now usual to make "the Secretary for Scotland" as in the clause the authority in this matter. The object of the Board of Trade insisting in this clause is apparent, and the clause is in the nature of a proper condition with a view to the issue of the licence for privileged incorporation. "Charitable" in certain cases might be somewhat restricted. The bracketed addition indicates what has been passed in denoting the proper *Cy pres* application to be made in the absence of similar institutions with the same object as the winding up association.

¹ This clause is in the Board of Trade Draft Form and is never dispensed with.

² Seven persons at least should subscribe. Reading sections 2 and 121 of the Act together, a Private Company consisting of the minimum number of two persons seems outwith the nature of an association formed for other than profit considerations.

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APPENDIX A.

Non-profit
Company.VARIOUS FORMS OF FUNDAMENTAL
"OBJECTS" CLAUSE.¹

ACADEMY OF MUSIC.

1. To acquire and take over the rights and assets of _____, and to acquire, take over, improve, develop, extend and maintain the system of musical education recently carried on as a business by the said _____, and for that purpose to adopt the agreement referred to in Article No. 1 of the Articles of Association of the [Academy], and to carry the same into effect with or without modification.

2. To establish, maintain, and carry on an Academy, School, or College in _____, with branches in any part of the United Kingdom or abroad, for the highest order of instruction and education of students in music.

3. To teach music in all its branches, and to promote methods of teaching music, particularly the rhythmic method, and to train and qualify teachers for teaching such methods and all branches of musical education.

4. To hold or provide for concerts, recitals, musical entertainments; to arrange for the performance of operas, oratorios, and other musical works, the delivery of lectures, the giving of demonstrations, the teaching of elocution and other arts, the performance of plays, the teaching of modern languages with reference to their use in singing and other purposes connected with the main objects of the [Academy], and to conduct and hold public meetings, conferences, and classes calculated directly or indirectly to advance the cause of musical education in its technical, professional, or general aspects.

5. To hold examinations in all branches of music, languages, elocution, and other arts, and generally to promote and encourage

¹ The few examples given are merely illustrative.

the study of music in all or any of such branches by the award of donations, scholarships, bursaries, prizes, or other awards or distinctions, and to award diplomas, medals, and certificates to successful candidates and to such persons as may be distinguished in music or elocution on such terms and conditions as may be prescribed by the Academy, but so that every diploma or certificate notifies upon its face that it is not issued under, in pursuance or by virtue of any statutory or Government sanction or authority, but only by the authority of the Academy.

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BENEVOLENT FUND.

1. To take over the whole or such part as can be legally vested in the Association of the property of the institution known as the medical benevolent fund.

2. To relieve gratuitously by means of pecuniary or other assistance necessitous persons who are or have been members of the medical profession, and their wives, widows, or children, subject to the proviso that no payment shall be made or assistance in money or money's worth given hereunder to any person entered upon the register as a member of the Association.

3. To provide annuities for such of these persons as are aged or disabled.

4. To establish and maintain district branch sectional guild and local and other associations for the promotion, assistance, and improvement of all or any of the objects of the Association.

5. To obtain money for the objects of the Association in any lawful manner.

CATTLE SOCIETY.

1. To maintain unimpaired the purity of the breed of cattle known as cattle, and to promote the breeding of such cattle.

2. To collect, verify, preserve, and publish pedigrees of and other useful information relating to such cattle.

3. To promote the general interests of the owners and breeders of such cattle.

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Company.

4. To investigate doubtful or suspicious pedigrees of and other alleged errors or misrepresentations relating to such cattle, and to record and publish the results of such investigations.

5. To investigate, settle, and arbitrate upon all questions and disputes submitted to the [Association] relating to such cattle.

6. To make inquiries and to institute or defend legal or other proceedings relating to the [Association] or to such cattle, always providing that the [Association] shall not commit any breach or infringement of the law relating to maintenance or champerty.¹

7. To raise and manage funds and generally to do all things incidental or conducive to the attainment of the objects of the [Association].²

COLLEGE.

1. To establish in the _____ of Scotland, and to equip, carry on, maintain, and develop a College having for its main objects the communication of instruction in and the study of [agriculture and the promotion of agricultural research, subject to the declaration that "agriculture" in this Memorandum shall mean and include farming and stock raising, forestry, arboriculture, estate and farm management, market gardening, horticulture, poultry-keeping, bee-keeping, veterinary science, agricultural chemistry, and generally every science, art, and handicraft conducive or incident to successful agriculture].

¹ The proviso here has been inserted in an actual case at the instigation of the Board of Trade. It is ridiculous that such a proviso should be insisted upon, and it is in any event unnecessary. But so taking the power to raise or resist judicial proceedings which is inherent in such an association suggested to the Board of Trade counsel the prohibition which is part of the law of England that in any proceedings in England the association should not come into conflict with its peculiar doctrines of maintenance and champerty! It is wholly out of place at all events in the Memorandum of a Scottish association, and strong appeals should be made to the Board of Trade for the omission of such inappropriate matter.

² The only other clause in the short "object" clause of the association for the formation of such a society upon which this form is based was the usual clause as to the acquisition and disposal of land and property subject as regards land to the provisions of section 19 of the Act.

2. To take over, carry on, and develop the work hitherto and now carried on by the unincorporated association called _____, and subject to the provisions of section 19 of The Companies (Consolidation) Act, 1908, to take over and grant discharges therefor, as at the date of the incorporation of the Association, [or College] the whole property, funds, and rights of the said unincorporated association, or such of them as may be legally vested in the Association.

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3. To establish, equip, conduct, and co-operate in establishing, equipping, and conducting at such places in Scotland as the Association [or College] shall from time to time deem expedient, such schools, classes, lectureships, and other means of instruction as the Association [or College] shall deem expedient with a view to the communication of instruction in and the study of agriculture.

4. To promote, facilitate, and encourage the teaching and study of agriculture in schools and otherwise in Scotland, and the efforts of county councils and municipal and other corporations, institutions, and persons to carry on education and research in agriculture, and to disseminate agricultural knowledge; and for that purpose to make such grants or contributions towards expenses, and generally to enter into such financial and other arrangements as the Association [or College] shall from time to time deem expedient.

5. To erect, furnish, and maintain on the lands transferred to the [Association], and on any other lands acquired by the [Association], such buildings as may be necessary and suitable for carrying on a College of agriculture.

6. To provide such apparatus, fittings, materials, furniture, appliances, conveniences, and accommodation as may be requisite or necessary for the Association [or College].

7. To grant and establish bursaries and scholarships in agriculture, and to make payments towards the expenses of students, and grant prizes for success in competitions or other efforts which the [Association] may deem conducive to education or research in agriculture.

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Company.

8. To provide for the holding of examinations and the awarding of certificates and distinctions, and the establishment of scholarships and awards, but so that the [Association] shall not grant diplomas or titles, except in so far as the same shall be authorised by minute of the Scottish Education Department.

9. To promote research in agriculture, and with that view to establish laboratories, carry on experiments, and model or experimental farms, and thus to carry on the business of farmers, but so far only as may be necessary or expedient for the objects of the [Association].

10. To promote, support, or assist, either as branches of or independently of the [Association] any other association or institution having objects similar to the objects of the [Association] or any of them, either by loans or gifts or by arrangement for mutual co-operation or otherwise, upon such terms as may be determined.

11. To amalgamate or affiliate with, or unite with itself any association or institution having similar objects, in such manner and upon such conditions as may be determined.

12. To publish and pay the expense of publishing literature which the [Association] may regard as conducive to education or research in agriculture, and to contribute to the expense of such literature published by any person or association, and to provide or contribute towards the provision of a library or libraries designed to assist the study of and research in agriculture.

INFIRMARY.

1. To provide advice, surgical aid, medicines, and generally hospital and dispensary accommodation for persons suffering from disease or injury [and, in particular, diseases of or injury to the eye].

2. To provide means for clinical instruction or instruction in ophthalmic science.

3. To establish a convalescent home or homes and to maintain the same, or to contribute to such homes unconnected with the Association for the benefit of patients of the Association.

4. To erect, construct, maintain, rebuild, alter, add to or remove any buildings required for the furtherance of the objects of the Association, and to furnish, fit up and equip all such buildings, and provide all surgical and scientific apparatus and appliances for carrying out the objects of the Association.

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Non-profit
Company.

MARINE BIOLOGICAL STATION.

1. To take over the whole of the assets and liabilities of the unincorporated association, founded [*or constituted*] in , and carried on under the name of ; and for that purpose to enter into such agreements as may be necessary.

2. To promote the investigation of the marine fauna and flora of the district known as the sea area, or of other parts of the coast of Scotland, the establishment, endowment, and maintenance of a biological station or stations at , and at such other place or places on such coast as may from time to time be found convenient or desirable, and generally the advancement of biological research and education.

3. To establish, equip, and maintain laboratories in connection with such stations for carrying on systematic investigation research, instruction and education, including such hydrographic and meteorological work as may be deemed expedient within the scope of the objects of the Association.

4. To form, equip, and maintain museums in connection with such stations for the preservation and exhibition of specimens relating to the work of the Association, and to style the museum at , containing collections formed by the late , and gifted to the station thereat by his widow as the Museum.

5. To form, equip, and maintain aquaria in connection with such stations in aid of the scientific investigation and practical study of marine zoology and botany, and for the exhibition of living specimens.

6. To form, equip, and maintain libraries of books and other publications upon or relating to marine fauna and flora.

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Company.

7. To undertake all operations by way of dredging, shore collecting, and the like for the purpose of providing material for systematic investigation, research, and education, and also for exchange or sale in the form of specimens or otherwise.

8. To form, equip, and maintain lecture rooms; to institute courses of lectures and demonstrations; to manage and conduct classes; and to hold meetings for the receiving of communications and discussion thereon and exhibitions of specimens, apparatus and appliances in any way relating to marine fauna and flora, and within the objects of the Association.

9. To hold and conduct examinations in marine zoology and botany and other subjects in direct connection therewith, and to prescribe and carry out in relation thereto all such regulations as the Association may deem expedient from time to time; and to grant certificates to any persons entitled thereto under such regulations, provided that no diploma or title shall be granted by the Association in connection with any classes managed and conducted by the Association, and that certificates granted by the Association shall bear on their face to be the result of examinations held on behalf of the Association only and not in pursuance of any government or statutory sanction or authority.

10. To erect, equip, and maintain hostels or residences for students and workers attending any of the stations of the Association with provision for their board and lodging.

11. To edit, publish, and issue the transactions of the Association, and books, pamphlets, magazines, journals, and other literary matter relating to or connected with the objects of the Association and its operations.

12. To admit members and the public to any stations, aquaria, museums, exhibitions, lectures, classes, libraries, and other agencies of the Association by payment or otherwise as the Association may determine.

NATIONAL FOOD FUND.

1. To collect food and food stuffs for the purpose of distribution amongst the necessitous.

2. To encourage the careful handling of and to prevent the waste of the nation's food resources by means of an educational propaganda on a large scale.

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Company.

3. To promote information with reference to the main objects of the Association by lectures, discussions, books, and correspondence with public bodies and individuals or otherwise.

4. To collect moneys for the purposes of effecting and carrying on the main objects of the Association.

5. To establish, support, and aid in the establishment of any charitable or benevolent institution or fund, and to subscribe or guarantee money for charitable or benevolent purposes in any way connected with or calculated to further the main objects of the Association.

SCHOOL.

1. To acquire, own, and carry on the educational institutions known as The High School for Girls and The Training College, ; to acquire the whole or any part or parts of the goodwill, property, and assets of such institutions, or either of them; and to undertake all relative obligations and liabilities.

2. To acquire by purchase or otherwise, and undertake all or any part of the business, assets, and liabilities of any person or company carrying on any educational business similar to the business of the [Association], or which the [Association] may consider conducive to the attainment of the objects of the [Association].

3. To make and carry into effect arrangements with respect to the affiliation, union of interests, co-operation or amalgamation of the [Association] either in whole or in part with any other institution or association having objects similar to or kindred with any of the objects of the [Association], provided that such [Association] shall prohibit the payment of dividend or profits to its members to the same extent as such payment is prohibited to the members of the [Association].

4. To co-operate in the teaching and study of any of the subjects undertaken by the [Association] with any other educational bodies or authorities.

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Company.

5. To grant and establish bursaries, scholarships, and prizes, and to make payments towards the expenses of pupils approved by the [Association] [or Council].

6. To print, publish, buy and sell books, magazines, and other publications relating to or for the purposes of the [Association], and to buy and sell all other class materials of every description.

7. To establish and maintain boarding or residential houses, or rooms for the accommodation of pupils or other persons approved by the [Association] [or Council].

APPENDIX B.

VARIOUS FORMS OF ORGANIC OR FUNDAMENTAL RULES INSERTED IN MEMORANDUM.

1. No person shall be qualified for nomination or election as a director [or governor, *as the case may be*] of the [Association] who

- (1) is a bankrupt;
- (2) holds any office or place of profit in the gift or disposal of the [Association].
- (3) has directly or indirectly by himself or his partner any share or interest in any contract or employment with, by, or on behalf of the [Association]; and

any person shall be disqualified for continuing as a director [or governor] who

- (1) becomes bankrupt;
- (2) holds any office or place of profit as aforesaid;
- (3) has any share or interest as aforesaid; or
- (4) fails to attend any meetings of the [Association] for a period of [twelve] months without leave of absence from the [Association];
- (5) becomes incapable of acting;

provided that no person shall be disqualified or be deemed to have any share or interest under such contract or employment by reason only of his having any share or interest in

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Company.

- (a) any agreement for the loan of money or any security for payment of money only ;
- (b) any newspaper in which any advertisement relating to the affairs of the [Association] is inserted ;
- (c) any company or corporation contracting with the [Association] for lighting, supplying with water, insuring against fire any property of the [Association], or insuring any persons in the employment of the [Association] against accident ; or
- (d) any railway company or any company incorporated by Act of Parliament or Royal Charter or under The Companies Acts.¹

2. The following rules, in continuation of the policy adopted by the said (*unincorporated society*) and in operation at the date of the incorporation of the [Association] shall be fundamental, namely:—

- (1) No pupil shall be required to receive religious instruction except from a minister of the religious persuasion of his or her parents or guardians, but it shall be the duty of the master or mistress immediately in charge of such pupil to see that such instruction is actually given.
- (2) Religious instruction shall be held at definite times as specified in the curriculum from time to time.
- (3) Any such pupil may at any time be visited by a minister of the religious persuasion of his or her parents or guardians.

¹ The Editor submits that such a clause as this, if at all made use of, is more fittingly made an Article of Association. See General Notes. But the Board of Trade have approved, and will, no doubt, approve, when desired, of its insertion in the Memorandum, as it is in aid of the integrity of administrators. The clause seems to derive its inspiration from section 13 of The Town Councils (Scotland) Act, 1900. It is for consideration whether the general article providing for the exclusion or removal of members considered prejudicial to the interests of an association does not meet the situation without rendering it necessary to contemplate by express provision the existence of disqualifications of the nature frequently enumerated, *e.g.*, crime, insanity, &c.

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Company.

- (4) Pupils may be selected or elected from any class of society without regard to the status or financial means of their parents or guardians.
- (5) The method or manner of selecting or electing pupils shall be governed by rules or bye-laws to be made from time to time by the Association [*or* Council].
- (6) No person shall be admitted as a pupil or employed as a blind worker or instructed by the [Association] in any work or handicraft until such person shall have been approved by the Association [*or* Council].

APPENDIX C.

MISCELLANEOUS EXECUTIVE AND GENERAL MEMORANDUM CLAUSES.

To sell, feu, or otherwise dispose of, lease or otherwise grant the use of, buildings, premises, lands or other heritable rights, and sell or otherwise dispose of any other property or any part thereof on such terms and conditions as the [Association] may think fit.

To borrow or raise money [to such extent and to grant such security for the repayment thereof] on bond and disposition in security, debenture or otherwise on the security of the property and assets [heritable and moveable] of the [Association] [as may from time to time be determined].

To accept legacies, donations, and endowments having for their objects or part thereof any object similar to those of the [Association] and either in a corporate capacity or through any member or members of the [Association] appointed by the [Council] for the purpose, to manage and administer such legacies, donations, and endowments, and to carry out and perform any trust or condition attached thereto, or to act with others, either individuals or trustees, in managing and administering any such legacies, donations, and endowments in which the [Association] may have an interest.

To purchase from an insurance company or otherwise establish, maintain, and administer a fund or funds by way of sick benefit, pension, or superannuation for behoof of employees; provided that nothing in this clause shall empower the [Association] to carry on assurance business of the classes specified in the first section of the Assurance Companies Act, 1909.¹

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Company.

To grant or undertake any obligation or guarantee, or enter into any agreement which may be granted, undertaken, or entered into by employers under or in respect of the National Insurance Act, 1911, but subject in all respects to the provisions thereof.

To [deposit] invest [or lend out] the funds [not immediately required] of the [Association] or funds under its charge in such way [and upon such securities] as may be provided by the Articles of Association [or as may from time to time be determined], [and to realise and convert into cash all such deposits, investments, loans, or securities].

To purchase, acquire by disposition, feu, lease, or otherwise, lands, heritages, and other heritable property and rights in lands, heritages, or other heritable property in one or more parts of the City of _____ or elsewhere in Scotland for the purposes of the [Association], but subject to the provisions of section 19 of The Companies (Consolidation) Act, 1908.²

To erect, enlarge, alter, maintain, and repair premises on the lands and heritages of the [Association].

To acquire, purchase, and hire furniture, apparatus, utensils, materials, goods, effects, and stock of every kind, which may be required in carrying out the objects of the [Association].

To manufacture, sell, and dispose of all material, goods, stock, and effects of every kind within the scope of the main objects of the [Association].

¹ It is not easily understood why such negative conditions should be insisted upon. The Assurance Companies Act, 1909, should be sufficient to prevent such associations undertaking assurance business within the meaning of the statute.

² It is not usual to refer to lands intended to be acquired by particular description or by reference to titles, but it is occasionally done.

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Company.

To promote, support, or oppose legislative or other measures affecting or calculated or likely to affect directly or indirectly any of the interests and objects of the [Association].

To form guarantee funds from time to time, and to receive subscriptions thereto from members of the [Association], or other persons for the purpose of carrying out the objects of the [association], and of defraying the expenses incurred by it in contracting for and conducting [concerts, lectures, or other forms of entertainment], and that upon such terms as the [Association] may think fit, and to accept guarantees on any terms that the [Association] may agree upon with the granters thereof.

To provide that all persons at the date of the said transfer holding or receiving any office, place, employment, pension, allowance [bursary, scholarship] or emolument chargeable upon or payable out of the funds of the [governors] of the said [*unincorporated association*] shall continue to hold or receive the same under the [Association], subject to the same conditions under which the same were held at the date of the said transfer [subject to the power of the [Association] to dispense with the services of any officer or servant of the said [*incorporated association*], and in such case to grant, subject to the approval of the Scottish Education Department, such compensation, superannuation, or allowance as may appear to the [Association] to be reasonable, and to apply its funds to that purpose accordingly; and subject to the proviso that any such officer or servant aggrieved by the amount of the compensation, superannuation, or allowance proposed to be granted by the Association, or by the refusal of the Association to make any grant, may, within months after the decision of the Association is intimated to him, appeal to the Scottish Education Department, and their determination as to his right to such grant or the amount thereof shall be final.]

To apply, petition for, or promote any Act of Parliament, Royal Charter, or other authority in furtherance of the objects of the [Association].

To undertake and execute any trusts which may be lawfully undertaken by the [Association] and conducive to the attainment of its objects.

To establish and support or aid in the establishment and support of any charitable or benevolent associations or institutions, and to subscribe or guarantee money for charitable or benevolent purposes in any way connected with the purposes of the [Association] or calculated to further its objects.

Form No. 8.

Non-profit
Company.

To draw, make, accept, endorse, discount, execute, and issue promissory notes, bills of exchange, and other negotiable or transferable instruments.¹

¹This is an unusual power to insert as an object in a non-mercantile association, but it appeared in the Memorandum of an association which from the nature of its objects would necessarily enter into large mercantile commitments.

ARTICLES OF ASSOCIATION.

NON-PROFIT ASSOCIATIONS—LIMITED BY GUARANTEE.

Form No. 9.

GENERAL NOTES.

SUCH associations are not managed upon the lines of mercantile concerns. The share element is in practice avoided, and liability upon winding up at so much per member by way of guarantee is the method usually adopted. Accordingly, the Articles of Association of such associations are *sui generis*. The practitioner should have before him the statutory style of Articles for such a company as given in Form B in the Third Schedule of the Act. The Editor refers to the General Notes upon the Memorandum of such associations. The Form No. 9 of Articles of Association here submitted is based upon an examination of the Articles of Association of several companies in Scotland and England. The practitioner can readily perceive the nature of the regulations as appropriate to the management of these non-profit associations in practice and that will pass the Board of Trade.

Forms are not given in this work of Memorandum and Articles of Association of associations, with or without share capital, but limited by guarantee where it is not intended to carry on the objects of the association without the use of the word "Limited." It is a simple matter to adopt the Forms in the volume to such associations by reference to the statutory models in Forms B and C in the Third Schedule of the Act. See *Company Law and Practice*, p. 491.

ARTICLES OF ASSOCIATION.

NON-PROFIT ASSOCIATION—REGISTERED WITHOUT
“LIMITED” UNDER BOARD OF TRADE LICENCE.

Form No. 9.

THE COMPANIES ACTS, 1908 to 1917.

ASSOCIATION NOT FOR PROFIT AND LIMITED BY GUARANTEE.

ARTICLES OF ASSOCIATION

OF

I.—PRELIMINARY [FUNDAMENTAL *or* CONSTITUTION].

1. The Association¹ [is established [for the objects set forth in the Memorandum of Association] under The Companies Acts, 1908 to 1917, as a Limited Company, has been registered as a Company with limited liability without the addition of the word “Limited” to its name under the provisions of the 20th section of the Companies (Consolidation) Act, 1908, and] shall be governed by the regulations contained in these Articles of Association, but [subject to the provisions of Clause V. of the Memorandum of Association] the Association by special resolution may alter, amend, add to, or rescind any of the Articles herein contained.²

¹ “College,” “Chamber,” “Institute,” or as the case may be, is frequently substituted for “Association.”

² No reference is necessary to the regulations of Table A where as here it is not intended to have a share capital. Section 11 of the Act does not apply in such a case. It is not essential to refer in the Articles to the power of the members to alter the Articles. That is a

Form No. 9.

INTERPRETATION.

Non-profit
Company.

2. In these Articles, unless the contrary appears from the context,

The ["Association"] means the (*name of company*);

The "Office" means the registered office from time to time of the Association;

The "Members" means the members of the Association for the time being as defined in Article [4];

The "Council" means the members of the council [of management] for the time being as defined in Articles [21 to 31];

"Month" means calendar month;

"Year" means from 1st January to 31st December inclusive;

The "Seal" means the common seal from time to time of the association;

"Writing" includes printing, typewriting, lithography, and other substitutes for writing;

Words importing the male gender only include females, and importing the singular number only include the plural, and *vice versa*.

or

Variation.

2. These Articles shall be construed with reference to the provisions of The Companies (Consolidation) Act, 1908, and any statutory modification thereof, unless the context otherwise requires, and terms and expressions used therein shall be taken

statutory power independent of any provision therefor in the Articles. See section 13 of the Act. Nevertheless, from the convenient code point of view, it is common to find a separate Article dealing with the subject of alteration, as, *e.g.*—"The members may from time to time in extraordinary general meeting by a special resolution rescind or alter all or any of these Articles, or make new Articles to the exclusion of, or in addition to, all or any of the existing Articles, provided that such new or altered provisions be in accordance with The Companies (Consolidation) Act, 1908, or any then subsisting statutory modifications or extensions thereof." But it is thought that Articles of Association of the class dealt with should aim at brevity, and only incorporate essential Articles and omit Articles that are unnecessary. The insertion of such an Article leads to a companion Article defining a special resolution in the language of section 69 of the Act, which is again superfluous.

as having the same meanings as they have when employed in **Form No. 9.**
the said Act.

or

Non-profit
Company.

2. "Writing" includes printing, typewriting, lithography, Variation.
and other substitutes for writing.

Words importing the singular number or masculine gender only include the plural number and feminine gender, and *vice versa* (except in the incorporate name of the school) [*e.g.* "Girls"].

Words and expressions used in these Articles shall have the same respective meanings as they have in The Companies (Consolidation) Act, 1908, and any statutory modifications thereof, except that the word, *e.g.*, "college" shall be substituted for "company," the word "council" shall be substituted for "directors" and "board," the word "members" shall be substituted for "shareholders," and the words "first general meeting" shall be substituted for "statutory meeting," as these several words and expressions appear in the Act.

MEMBERSHIP.

3. The Association for the purposes of registration is declared to consist of _____ members [or The membership of the Association for the purposes of registration is declared to be unlimited].¹

MEMBERS.

4. The following persons shall be members of the Association upon signifying in writing their desire so to become members,² namely:—

- (1) The trustees and the members of the relative committees of management in whom the property, assets, and duties of administration of the (name

¹ Where the membership is not unlimited the Article may run after the word "member" thus, "but the directors [hereinafter mentioned] may whenever they think fit register an increase of members."

² "Upon signing the register of members or an agreement to become a member," is a variant which some adopt. Section 25 of the Act has to be kept in view as to the register of members, and the membership group of Articles may be preceded by an Article to the effect that "The association shall comply with the provisions of section 25 of The Companies (Consolidation) Act, 1908, and every member of the association shall sign the register of members or an agreement to become a member before he shall become a member." The subscription of the Memorandum infers an agreement within the meaning of

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Company.

of Association prior to incorporation) were vested immediately prior to the incorporation of the Association shall be members for life.¹

this Article. See section 24 of the Act. In the case of the class of companies under consideration, it seems unnecessary, where there is no share qualification, to insert any Article to the effect that the rights and privileges of every member shall be personal to such member, and shall not be transferred or transmissible either by the act of such member or by operation of law. It seems also superfluous to insert any Article to the effect that every member shall be bound to further to the best of his ability the objects, interests, and influence of the association, and to observe all regulations and bye-laws of the association made in pursuance of powers in the Memorandum or in the Articles. But it is not inappropriate to provide that any member failing in observance of any bye-laws or regulations of the association or whose conduct in any respect shall be derogatory to the character or [detrimental or] prejudicial in the opinion of [the executive council or governing body, *as the case may be*] to the interests of the association may be excluded from the association by the resolution of at least [three-fourths] of the members of the governing body present, and voting at a special meeting with a specified quorum [or suspended from the privileges of membership by resolution of the [executive council] until the next general meeting of the [society], and such member may, by the resolution of the majority of the members present at such general meeting, be excluded from membership], and that upon such exclusion such member should cease to be a member. The appropriate Article may provide for, say, twenty-one days' previous notice of the resolution and for opportunity to the member proposed to be dealt with to appear and defend himself. In some associations elaborate provision is made for the reinstatement of excluded members, but this is rare, and it does not seem absolutely essential. In the event of strife, the company in general meeting could always agree to admit of new. Most Articles are framed, therefore, upon the footing, apparently, that exclusion once resolved upon is intended as permanent. Where an association is formed for the purpose of giving a governing body corporate privileges without a general membership in addition to the members of such body, *e.g.*, a college not depending upon subscriptions, it is usual to make very full administrative provisions. It is not, however, considered necessary to give an example of such a case. Variations in the conditions of membership of such Associations are shown in Appendix A hereto, p. 363.

¹ A schedule of the names of such members is sometimes appended and here referred to as appended. Provision is usually made for the recognition as members of those identified with the association as unincorporated. For example—

“In addition to the persons qualified for membership as aforesaid, every person who at the date of the incorporation of the [association] was a life governor of the (hereinafter called the old [association]) shall be qualified to be a life member of the [association] provided that he shall submit his application for membership within one year from such date.” Provision may likewise require to be made for persons who subscribed to the unincorporated association.

- (2) Former pupils of the said Association as constituted hereunder on becoming debenture holders or upon payment of a donation in one sum of not less than two guineas shall be and become members for life. or of the **Form No. 9.**
Non-profit
Company.
- (3) Persons whose membership shall hereafter be deemed advantageous to the Association, and who shall have been elected members for life by the Association at an annual general meeting.
- (4) All members of council, but so long only as they (so far as not life members of the Association shall remain members of council.

5. Any member may at any time resign his membership and cease to be a member by sending his resignation in writing to the secretary of the Association, but a member resigning shall be eligible for readmission to membership.

GENERAL MEETINGS.

6. The first general meeting of the Association shall be held at such time, not being less than one month or more than three months after the incorporation of the Association, and at such place as the [council] may determine.¹

7. Subsequent general meetings shall be held once in each year (not being more than fifteen months after the holding of the last preceding general meeting) at such time and place as may be prescribed by the [council], and, if no other month is prescribed, a general meeting shall be held in the month of November in each year, and at such time and place as may be prescribed by the [council.]

¹This Article runs upon the lines of section 65 of the Act, but, of course, a company of the non-profit order and without any share capital does not need to observe the provisions of that section. Section 64 of the Act, however, applies to "every company," and accordingly the first general meeting may be expressed as to be held "within three months of the incorporation of the [association]" or at any time within the calendar year, or simply in the language of section 64, thus—"A general meeting of the company shall be held once at least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting."

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8. The general meetings mentioned in the last preceding Article shall be called "ordinary general meetings," and all other meetings of the Association shall be called "extraordinary general meetings."

9. The [council] may, whenever they think fit, and they shall, upon a requisition in writing made by not less than [fifteen] members, convene an extraordinary general meeting.¹

10. Any such requisition shall specify the object of the meeting requisitioned, shall be signed by the members making the same, and shall be deposited at the office, and the meeting, whether convened by the [council] or the requisitionists, shall be convened for the purposes specified in the requisition, and, when convened by the requisitionists, for these purposes only.²

11. Seven clear days' notice, at least, shall be given to the members, specifying the place, day and hour of any general meeting, ordinary or extraordinary, and, in case of special business, the general nature of such business, and such notice shall be sent by post or otherwise as hereinafter provided.³

12. Whenever any meeting is adjourned for fourteen days or more, at least five days' notice of the place and hour of meeting of such adjourned meeting shall be given in the same manner as the original notice.

13. The non-receipt of any notice by any member shall not invalidate the proceedings at any meeting.

¹ See section 66 of the Act which conditions not less than one-tenth of the issued share capital as the basis of a requisition. Article 7 of the Articles of Association of Form B in the Third Schedule of the Act makes five the minimum number of members necessary for a requisition. This appears to be a matter for arrangement with the Board of Trade.

² The limitation as regards the purposes of a requisitionists' meeting appears superfluous.

³ It may be useful to provide, where the membership is large, that "any member desiring to submit any particular business at an ordinary general meeting shall give not less than [three weeks] notice thereof to the secretary, and the same shall be specified in the notice convening the meeting." In suitable cases it may also be convenient to provide for notice of meetings simply by advertisement in specified newspapers in place of sending out circulars upon a heavy register.

PROCEEDINGS AT GENERAL MEETINGS.

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Company.

14. The proceedings at an ordinary general meeting, other than the first one, shall be to receive and consider the balance sheet, reports of the council and of the auditors, to elect members of council, and to transact any other business which, under these Articles, ought to or may be transacted at an ordinary general meeting.

15. All other business transacted at an ordinary general meeting and all business transacted at an extraordinary general meeting shall be deemed special.

16. [Ten] members, personally present, shall be a quorum for a general meeting, ordinary or extraordinary, and no business shall be transacted at any meeting unless the requisite quorum be present at the time when the meeting proceeds to business.¹

17. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened by such requisition as aforesaid, shall be dissolved; but in any other case it shall stand adjourned to the same day in the next week at the same time and place, and if at such adjourned meeting a quorum is not present, any five members who are personally present shall form a quorum and may transact the business for which the meeting was called.

18. The president of the [council,] or in his absence one of the vice-presidents of the [council] nominated at the meeting, shall be entitled to take the chair at every general meeting, ordinary or extraordinary, or if at any meeting the president or any vice-president shall not be present or shall decline to take the chair, the members present shall choose another member of the [council] to be chairman.

19. Every question submitted to the meeting shall be decided by a majority of the votes of those present, and in the case of an equality of votes the chairman of the meeting shall be entitled to a second or casting vote.

¹ With regard to the composition of the quorum, see Article 12 of the Articles in Form B in the Third Schedule of the Act.

Form No. 9.

VOTES OF MEMBERS.

Non-profit
Company.

20. Every member, for the purposes of a resolution on which a member is entitled to vote, shall have one vote. Votes shall be given personally and not by proxy.¹

COUNCIL [*or* MANAGEMENT, &C.].

21. The whole business of the [Association] shall be managed by the [council],² who may exercise all such powers [including powers created by any Act of Parliament] as are not by The Companies (Consolidation) Act, 1908, or any statutory modification thereof, or by these Articles declared to be exercisable only by the [Association] in general meeting; and no direction made by the Association in general meeting shall invalidate any prior act of the [council] which would have been valid if such direction had not been made.

22. Until the first ordinary general meeting, such of the committee of [*the Association as unincorporated*]³ as shall become members of the Association shall be and constitute the [council].

23. The [council], which shall be composed of men and women shall thereafter consist of a president, one or more vice-presidents, and such number of members as the [Association] may from time to time determine.

24. The president and vice-president, or vice-presidents and the members of [council,] shall be elected by the Association at

¹ Proxies, unless specially provided for, are not allowed by the Board of Trade; and in practice the prohibition is made express. See Articles 22 to 24, both inclusive, of the Articles in Form B in the Third Schedule of the Act. Proxies are there provided for. Some English societies, where the membership is large, specially provide for the use of proxies. It is not in accordance with the spirit of non-profit societies that members should be able to vote by proxy as in a purely commercial company. If proxies are desired, the appropriate clauses from Articles of Association for Public Companies can easily be inserted.

² Or by a "Court of Directors," Committee of Management," "Life Governors," and the like.

³ Or "the subscribers to the Memorandum of Association." Where the executive of the Association is composed to any extent of representatives of public bodies the Articles will necessarily be more elaborate in reference to questions of retirement, &c. Provision may also be made for the appointment of patrons, for life or annually, without any responsibility in administration.

each ordinary general meeting from amongst the members of the Association, and such members shall hold office for one year and shall be eligible for re-election.

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Company.

25. Any member of [council] who shall cease to be a member of the Association, or intimate resignation of office in writing, or become bankrupt or incapable of acting, shall be held to have vacated office, and on the happening of any such event, or on the death of a member, the [council] shall have sole power, but shall not be bound, to appoint a member of [council] temporarily to fill such vacancy.

MEETINGS OF [COUNCIL.]

26. The [council] shall meet at such times as they think necessary.

27. The president, any vice-president, or any [five] members of [council] may require the secretary or other proper officer at any time to summon a special meeting of [council] by a notice delivered or sent by post to the members of [council,] which notice shall specify the business to be brought before the meeting, and, on such requisition, such meeting shall be summoned accordingly.

28. At all meetings of [council] [five] shall be a quorum.

29. All questions at meetings of [council] shall be determined by a majority of the votes of those present, and the chairman of the meeting shall, in case of equality, have a second or casting vote in addition to his deliberative vote.¹

30. If at the time appointed for a meeting a quorum be not present, or if the business at any meeting be not completed, the members of [council] present may adjourn the meeting to such day or time as they may fix.

31. The secretary or other proper officer shall keep or cause to be kept minutes of all proceedings of the [council] [and of the attendance of members thereat] including resolutions

¹ It is not unusual to provide for a poll, and, if desired, the necessary clauses *mutatis mutandis* can easily be inserted as taken from the Articles of a trading company. See Form No. 2 of Articles of Association for Public Company, p. 96, and Article 17 of the Articles in Form B in the Third Schedule of the Act.

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Company.

POWERS AND DUTIES OF THE [COUNCIL].

32. Without prejudice to the powers before conferred, the [council] shall have the following powers, namely¹:—

- (1) To pay the cost, charges, and expenses preliminary and incidental to the preparation and execution of the Memorandum and Articles of Association and the incorporation of the [Association].
- (2) To appoint on such terms, as the [council] shall think proper, secretaries, treasurers, examiners, clerks, and agents for permanent, temporary, or special services, to determine their powers and duties, to fix their salaries or emoluments, to require security in such instances and to such amount as they think advisable, and to discharge, dismiss, remove, and suspend such servants or others at its discretion.
- (3) To appoint on such terms, as the [council] shall think proper, any head mistress of the [school], to determine her powers and duties and the amount of her salary and emoluments; to determine the number of the other members of the teaching staff or others employed at or about the [school] or the boarding house, and the amount and mode of payment of their salaries; and at its discretion to discharge, remove, or suspend any head mistress or other member of the teaching staff or others appointed or employed as aforesaid.
- (4) To purchase, acquire by absolute title, feu, lease, or otherwise, and hold, let, and use lands and rights in lands or other heritable property in one or more parts of the City of for the purposes

¹ With the requisite change, some prefer to make each of these powers the subject of separate Articles, and distribute the Articles under such headings as Ordinary Powers and Special Powers.

set forth in the Memorandum of Association, but subject to the provisions of section 19 of The Companies (Consolidation) Act, 1908, and to erect, enlarge, alter, maintain, and repair premises on such lands or heritages.

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- (5) To sell, feu, or otherwise dispose of, with the consent of the Association, lands, heritages, or other heritable rights, buildings, premises, or other property of the Association, or any part thereof on such conditions as the Association may think fit.
- (6) To borrow or raise money on bond and disposition in security, debenture, mortgage, or otherwise, on the security of the property and assets of the Association as the [council] may from time to time determine; and in security of the money so borrowed, to dispense, convey, assign, mortgage, and pledge all or any part of such property and assets; and to make and carry into effect any arrangements considered expedient for securing the repayment of any money so borrowed or raised, including power to create any preferential right by way of payment of interest or repayment of capital in favour of any particular creditor or body of creditors; and to dispense and convey any property to trustees for debenture holders, provided that in the case of borrowing from any member of the Association the rate of interest payable on any loan from such member shall not exceed [Four] pounds sterling per centum per annum.
- (7) To open a bank account or accounts in name of the [Association], to draw cheques thereon, to make, draw, accept, and endorse promissory notes, bills of exchange, warrants, and other negotiable instruments, and to empower any one or more members of [council,] along with the secretary, treasurer, or other officer to exercise such powers.¹

¹ Unless the dealings of the association are likely to cover bills of exchange, it is more appropriate in such Articles to omit the reference to such documents.

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Company.

- (8) To grant and establish for and on behalf of the [Association], bursaries, scholarships, and prizes, and to make payments towards the expenses of pupils approved by the [council].
- (9) To print, publish, buy, and sell books, magazines, and other publications relating to or for the purposes of the [Association].
- (10) To establish and maintain boarding houses or residential establishments or rooms for the accommodation of pupils or others approved by the [council].
- (11) To accept legacies, donations, and endowments, having for their objects, or part thereof, any object similar to those stated in the Memorandum of Association; and either in a corporate capacity or through any member or members appointed by the [council] for the purpose to manage and administer such legacies, donations, or endowments, and to carry out and perform any trust or condition attached thereto, or to act with others, either individuals or trustees, in managing or administering any such legacies, donations, and endowments in which the [Association] may have an interest.
- (12) To purchase from an insurance company, or otherwise establish, maintain, and administer a fund or funds as a sick benefit or pension or superannuation fund or funds for behoof of employees; to grant or undertake any guarantee or obligation, or enter into any agreement which may be granted, undertaken, or entered into by employers under the National Insurance Act, 1911, but subject in all respects to the requirements and provisions of that Act; provided that nothing in this clause shall empower the [Association] to carry on assurance business of the classes specified in the first section of the Assurance Companies Act, 1909.¹
- (13) To invest the funds of the [Association] or funds under its charge upon such securities or invest-

¹ See notes to Appendix C to Form No. 8, p. 343.

ments as may from time to time be determined by the [council].

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Company.

- (14) To make such regulations or bye-laws not inconsistent with these Articles, for or relating to the conduct of the [Association] as a [scholastic] institution, such as prescribing general subjects of instruction, relative prominence to be assigned to each group of subjects, school hours, fees, times and durations of vacations, right of nomination to vacancies occurring in the school, and such kindred or other regulations as may be considered expedient, with power to alter, add to or repeal the same from time to time as the [council] may think fit.¹
- (15) To appoint a committee or committees of their own number from time to time, to delegate to such committee or committees, separately or conjointly, such powers as the [council] deem expedient, and to discharge or recall such committee or committees or their appointment, either wholly or in part, and either as to numbers or purposes.
- (16) To institute, conduct, defend, compromise, or abandon any legal proceedings by and against the Association and its officers or otherwise concerning its affairs, and also to compound, allow time for payment or satisfaction of, or refer to arbitration all debts and all claims by or against the Association.
- (17) To enter into, grant, execute, subscribe, and deliver contracts, agreements, undertakings, conveyances bonds and dispositions in security, mortgages, debentures, and all other deeds or writings necessary for giving effect to any of the foregoing purposes.

33. The [council] shall entrust the internal regulation of the Association to the sole management of the head mistress, who shall, subject to the approval of the [council], appoint and dismiss assistant teachers and others employed at or about the [school] or the boarding house or boarding houses, regulate their duties,

¹ Sometimes the proviso is added that no regulation or bye-law shall be made under such an Article where amounting to an alteration of the Articles without a special resolution in terms of the Act.

Form No. 9. and carry into effect the system of education for the time being approved of by the [council], be responsible to the [council] for the discipline of all the pupils, whether boarders or day scholars, in and out of the school, and the making and enforcing of all regulations in reference thereto as well as the supervision, regulation, and control of boarding houses and boarding house mistresses, and shall have the power of suspending from duty an assistant teacher or other person under her control, but she shall forthwith report the matter to the [council].

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Company.

34. The [council] may from time to time make such arrangements as may appear to be fit for the custody of all deeds and documents belonging to the Association.

INDEMNITY.

35. No member of [council] shall, except in case of wilful default, be liable for any losses which may arise from any investment of the funds of the Association, nor for any errors, neglect, or omissions on his part, nor for the intromissions of any officer or agent of the [Association], and the members of [council] and of its committees shall be entitled to be indemnified out of the funds and property of the Association for and against all outlays and liabilities incurred by them on behalf of the Association, and the [Association] shall keep them indemnified accordingly.¹

SEAL.

36. The [council] shall provide a common seal, and shall have full power to use the same in the execution of all or any of the powers hereby vested in them or otherwise in relation to the business or affairs of the [Association] as in its discretion is thought fit, [and the custody thereof shall be in such person or persons as the [council] shall from time to time appoint].

EXECUTION OF DEEDS.

37. All deeds or writings of a formal nature shall be sufficiently and validly executed if sealed with the seal and signed by [two] members of [council] and the secretary or other proper officer of the [Association] appointed for the purpose.

¹ This Article is sometimes divided into two Articles—Immunity and Indemnity respectively, cognate to such matters respectively.

ACCOUNTS.

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Company.

38. The [council] shall cause full and true accounts to be kept of the property and funds vested in the [Association], and of their intromissions therewith in such form and manner as they shall from time to time prescribe, and such accounts shall be kept for each year as from the date of incorporation of the [Association], or from and to such other dates as the [council] may fix; and the books of accounts shall be kept at the registered office of the [Association], or at such other place as the [council] may from time to time direct, and (subject to any reasonable restrictions imposed by the [council]) shall be open to the inspection of any member of the [council] or [Association].¹

39. A balance sheet made up to the same date as the said accounts shall be made out in every year and laid before the [Association] in general meeting, and such balance sheet shall contain a summary of the assets and liabilities of the Association arranged under convenient heads. Every item of expenditure fairly chargeable against the year's income shall be brought into account so that a just balance may be exhibited; and in any case where any item of expenditure which may, in fairness, be distributed over several years has been incurred in any one year, the nature and whole amount of such item shall be stated with the term of years over which it is proposed to distribute the amount.

40. A copy of such balance sheet shall be supplied to every member.²

AUDIT.³

41. Auditors shall be appointed and their duties regulated in accordance with sections 112 and 113 of The Companies

¹ "The accounts and books of the [association] shall be at all reasonable times open to the inspection of every member of the [association.]" is occasionally inserted as an Article *simpliciter*.

² In the case of such a company, this Article is not imperative, but a member has a statutory right to the copy of a balance sheet and of the auditor's report thereon under section 113, sub-section (3), of the Act upon tendering the statutory charge.

³ It may be preferred in some instances to set out in detail the statutory provisions of sections 112 and 113 of the Act as appropriate to such a company. It is not infrequent to provide that no member of the association shall be eligible for appointment as auditor; but where members may be specified as eligible, the Article should bar any

Form No. 9. (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force so far as not inconsistent with these Articles; and for this purpose the said sections shall have effect as if the word ["school"] were substituted for company; as if the word "members" were substituted for "shareholders"; as if the word ["council"] were substituted for "directors" and "board"; as if the words "first general meeting" were substituted for "statutory meeting" occurring in the said sections; and as if the words "next general meeting" were substituted for the words "first annual general meeting" occurring in section 112 (5).

or

Variation.

[41. The provisions of sections 112 and 113 of The Companies (Consolidation) Act, 1908, relating to audit and auditors shall apply to and be observed by the [Association], the first general meeting being substituted for the statutory meeting, the [council] being treated as the directors, and the members being treated as the shareholders for the purposes of these sections.]

NOTICES.

42. Notices by the [Association] may be authenticated by the signature of the secretary or other person appointed by the [council] to do so.

43. Notices may be served or given by the [Association] upon or to any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

44. Notices, if served by post, shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

45. Notices posted up in the office as regards any member whose registered place of abode is not in the United Kingdom shall be deemed to have been served upon the day of its being so posted

member of the council or governing body, or of any of its committees, in view of the clause in the Memorandum of Association prohibiting office-bearers of the association from deriving profit from any office under the association.

up, but any such member may register some place in the United Kingdom at which he may desire such service to be made, and the same shall be made thereat accordingly.

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Company.

46. Notices required to be given and not expressly provided for by these Articles shall be sufficiently given if given by advertisement at least once in a daily newspaper published in [Edinburgh].

47. Where a given number of days' notice or notice extending over any other period is required to be given, the day of service shall, but the day upon which such notice will expire shall not, be included in such number of days or other period.

NAMES, ADDRESSES, AND DESCRIPTIONS OF SUBSCRIBERS.¹

APPENDIX A.

VARIATIONS AS TO MEMBERSHIP.

ACADEMY OF MUSIC.

The first members of the [Academy] shall consist of the subscribers to the Memorandum of Association, and subsequent members shall be admitted upon such terms and conditions as [the council] may from time to time determine, and without prejudice to such determination, the following persons shall be eligible for admission as members:—

1. Persons of eminence or distinction in music, as composers, conductors, or as skilled performers.
2. Teachers of music capable in the opinion of the [council] of teaching up to the standard required for teachers of the [Academy].

¹ See Schedule appended to Memorandum. The Articles are signed and witnessed in precisely the same way. It is common for those identified with the promotion of this class of company, on account of their official connection with a prior unincorporated association or otherwise, to sign the Memorandum and the Articles, and in this way the signatories may sometimes form a large body of individuals.

Form No. 9.

Non-profit
Company.

Appendix A.

3. Persons interested in the development of musical education likely in the opinion of the [council] by their membership to be beneficial to the [Academy].
4. Persons applying for membership and passing a satisfactory examination in such subjects as may be prescribed by the [council] in their discretion.

BENEVOLENT ASSOCIATION.

The subscribers to the Memorandum of Association, and such other persons as shall be admitted to membership in accordance with these Articles [and none others] shall be members of the Association, and shall be entered in the register of members accordingly.

The membership of the Association shall consist of life members and ordinary members.

The qualification of a life member shall be the payment at one time to the [Association] of a sum of not less than [] pounds, and subject to the provision that if any company or firm shall have given, or shall give, a donation equivalent in amount to or exceeding [] pounds for each director of the company or parties of the firm respectively, each of the directors or partners of the company or firm respectively as then constituted or existing shall be qualified for admission as life members, and where any company or firm shall have given, or shall give, a donation of [] pounds and upwards, but less than a sum equivalent to [] pounds for each of the existing directors or partners of such company or firm respectively, such company or firm respectively shall be entitled to nominate in writing any director or partner respectively for life membership, and such nominee shall be entered in the register of members as a life member accordingly.

Executors of any person paying a legacy of more than [] pounds to the [Association], ministers and clergymen who have preached a sermon in aid of the funds of the [Association], and collectors of [] pounds or more in aid of its funds shall also be qualified as life members.

The qualification of an ordinary member shall be the annual payment to the association of the sum of [] [shillings or

pounds] or more, but less than the sum of [] pounds, [the qualification for life membership].

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Company.

Appendix A.

No person shall be admitted a member of the Association in any class without being duly qualified and making application in writing and being first approved by the [committee of management], and the [committee of management] shall have full discretion as to the admission of any person to membership in any class.

Every member, life or ordinary, shall have the privilege of recommending applicants for relief and of voting at all general meetings.

BLIND INSTITUTION.

The [Society] may from time to time in general meeting determine by an ordinary resolution the qualification of persons for membership other than the subscribers to the Memorandum of Association, and in particular the [Society] may determine that any person may be a member from year to year or for a term of years or for life as by payment of an annual subscription or donation or otherwise, and any person who in the opinion of the [Society] has rendered special services to the [Society] as resolved in general meeting shall be qualified for membership on such nomination for life or for any shorter period without payment of any subscription or otherwise as the [Society] may determine.

CATTLE SOCIETY.

Any person taking an interest in cattle may become a member of the [Society] upon signifying to the [council] in writing, through a member of the Society, his desire for membership, his approval therefor by the [council], and the entry of his name upon the register of members.

Members shall pay an annual subscription of [], payable in advance, upon the 1st day of [May] in each year, and no member shall be admitted to any meeting of the [Society], the [council], or any committee, or to any of the privileges of membership while his subscription is in arrear, or other moneys due from him to the [Society] remain unpaid, [and unless notice of withdrawal of membership shall have been given in writing to the secretary [or treasurer] of the Society [one month] at least before the 1st day of January in any year, the subscription

Form No. 9. of any member shall, unless [the council] otherwise determine,
 Non-profit be deemed as continuing and be payable accordingly].
 Company.

Appendix A.

INFIRMARY.

All persons and one nominee for each of the public bodies, public works, associations, companies, corporations, societies, firms, congregations, who have given or shall give a special donation of [] or upwards to the funds of the [Association], or who shall have contributed or shall contribute a sum of [] or more of annual subscription, after having paid said subscription once and so long as they shall continue to pay it [and such members are hereinafter referred to as the "qualified contributors]."

Every contributor of a donation of [] or upwards to the funds of the [Association] shall have the privilege of recommending for admission to the infirmary two patients annually; every contributor of a yearly subscription of [] or more shall have the privilege of recommending for admission two patients within twelve calendar months of the payment of the subscription; and every contributor of [] or upwards shall have the privilege within twelve calendar months of the payment of the subscription of recommending one patient for admission.

MARINE BIOLOGICAL ASSOCIATION.

All persons interested in the objects of the Association shall be eligible for [ordinary] membership, and upon signing an application in the form prescribed by the [council] and having the same endorsed by two members of the [Association] shall be, upon submission thereof to the [council] and upon their election either at a meeting of the [council] or of the [Association], decided by the resolution in either case of a majority of those present and voting, entered in the register of members as members accordingly, and the secretary of the [Association] shall provide every member upon certification of his election with a copy of the Memorandum of Association and Articles of Association and of any bye-laws in operation for the time being.

Any ordinary member who shall fail to pay his annual subscription for [twelve] months may be removed by the [council] from the Association, and the deletion of his name from the

register of members shall be conclusive evidence that he has ceased to be a member of the Association.

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Company.

Appendix A.

NATIONAL FOOD.

In addition to the subscribers to the Memorandum of Association, the [council] may from time to time admit any other person or persons to be a member or members of the [Association] either in an individual capacity or as representative of any association or body nominating him or them to represent such association or body, and the [council] may also from time to time appoint any persons to be vice-presidents of the [Association] who shall *ipso facto* become honorary members of the [Association] and entitled to all the privileges of membership upon signifying their consent in writing to become vice-presidents.

APPENDIX B.

VARIATIONS AS TO DIRECTORS, &c.

INFIRMARY.

The affairs of the Association shall be under the immediate management of a court, consisting of the following persons, who shall be called directors, to be elected annually, as follows:—

- (a) The president, vice-president, and fifteen directors to be elected from the qualified contributors by a majority of such contributors present at the annual meeting, and of their number three (excluding the president and vice-president) shall retire annually, but shall be eligible for re-election after having been a year out of office.
- (b) The honorary treasurer (to be appointed as after-mentioned, and provided that he shall be a member of the Association) *ex officio*.
- (c) One director to be appointed annually as their representative by each of the following public bodies:—
(*here name them*).

The director so appointed by any of the above public bodies must, at the time of his appointment, be a member of the electing body.

Form No. 9. No one holding a surgical appointment in the Infirmary shall be competent to act as a director.

**Non-profit
Company.**

Appendix B.

No director or any firm or partnership of which he is a member shall trade with the Association or make any personal gain from the affairs of the Infirmary.

APPENDIX C.

ACCOUNTS.

In respect that during the time when the new [school] buildings proposed to be immediately erected shall be in course of construction, it is the intention to carry on the business of the [School] in the present premises in _____ when charges against revenue account, in respect of interest on loans and the conduct of the business of the [School] shall be extraordinary, the [council] are authorised and empowered to charge against capital, either permanently or temporarily, the whole or such part of such extraordinary expenditure as they in their sole discretion may determine, and the same provision shall be applicable to the payment of interest on bonds or debentures or other loans and of feu duties which become due prior to the proposed new buildings being brought into use as the [School] buildings.¹

COSTS.

The costs, charges, and expenses of and incident to the preparation and execution of the Memorandum and Articles of Association and the formation and incorporation of the [Association] may be defrayed out of the funds of the [Association].²

DISQUALIFICATION OF MEMBERS.³

¹Sometimes a provisional clause of an analogous nature may be necessary.

²This Article is more frequently the subject of the particular powers conferred on the council or other governing body.

³An Article such as is adopted by ordinary trading companies is sometimes inserted, but it is suggested that such an Article is inappropriate to a non-profit association; and, in any event, Article 25 giving power to exclude any undesirable member owing to bankruptcy or otherwise ought to be sufficient in the ordinary case.

TRUSTEES.

Form No. 9.

In the event of the [council] resolving that any investments or other assets of the [Association] shall be transferred to or taken in the names of trustees, such trustees shall be at least three in number, and they shall each remain in office until resignation or removal by the resolution of the [Association] in general meeting specially convened, passed by a majority of [two thirds] of the members voting thereat.

Non-profit
Company.

Appendix C.

The resolution of the [council] contained in a minute purporting to be signed by the chairman of the meeting of the [council] at which it was passed, or by the chairman of the following meeting shall be a sufficient authority to or a sufficient discharge of any trustee acting thereon or exonerated thereby.

VALIDITY.

No act done by the [council] whether *intra vires* or not receiving the express or implied sanction of the [Association] in general meeting so long as the same shall not be *ultra vires* of the [Association] or contrary to the provisions of the Memorandum [with regard to the payment of members] shall be impeached by any member of the [Association] on any ground whatsoever, but shall be deemed to be an act of the [Association].

SECTION V.

FORMATION AGREEMENTS.

Forms Nos. 10, 11, and 12.

GENERAL NOTES.

Agreements:
trustee for
company now
unusual.

In the General Notes to the Memorandum of Association it is stated that sale agreements are not now usually made through the intervention of a trustee for an unformed company. It has been found in practice that the trustee serves no useful purpose, and as the company, after its incorporation, must adopt contracts made before registration in order to their validity by the execution practically of the same agreement as the trustee had entered into, the legal disadvantages pertaining to deeds entered into with a trustee or agent for an unregistered company are avoided by sale agreements being made with the company immediately after its incorporation (See *Company Law and Practice*, p. 139). No Form, therefore, of an agreement for sale between a seller or other promoter and a trustee for a company to be formed is given in these Forms. Such a Form is given in the Scots Style Book, 1902, I., p. 178, and it may be useful occasionally, *e.g.*, where existing companies propose to merge themselves in a new company. The difficulty created by *Henderson's Transvaal—Bisgood*, 1908, 1 Ch. 743 must always be kept in view in any proposal by one or more companies to sell their whole assets for shares. It is thought the difficulty may be surmounted by the absence of any provision in the agreement with the purchasing company as to the precise distribution of its share consideration and by leaving the method of such distribution to the selling company or its liquidator.

Reference to
agreements in
Memorandum
of Association.

It is, of course, not essential that any reference should be made to the adoption of any sale agreement in the "objects" clause of the Memorandum of Association, or even in the Articles of Association. The directors, being vested with all the powers of the company, as they usually are under the Articles of Association, have power to enter into any agreement within the objects of the Company as defined in the Memorandum. It is usual, however, in the Memorandum or in the Articles to make express provision for the

adoption of any agreement for the acquisition of any existing business to be carried on by the company, or, at least, to include an Article giving special power to the directors to acquire particular assets.

General
Notes.

Formation
Agreements.

A perusal of the common clauses in such agreements as given in the Forms based upon actual agreements shows or indicates the variety of matters to which practitioners require to attend so that the agreements may be made as comprehensive as possible. For instance, where book debts and the like are not included in the sale, the sale agreement may state specifically that they are not included and provide, *e.g.*, "The Company shall collect for behoof of the sellers free of charge [or for a commission or percentage of] all book debts, bills receivable, and sundry debt balances outstanding at the date of sale in so far as the same may not have been collected prior to the [last] date hereof [or of these presents], and the company shall be bound to collect such debts with all due diligence, and to pay over the amount as collected to the sellers or to apply the same in so far as not already done in discharging the liabilities of the sellers as at the date of sale." Occasionally, finished work or work in progress at the date of sale, e.g., in engineering businesses, may not be included, and the purchasing company may be placed under obligation as regards such work to complete work in progress on behalf of the sellers in return for the cost of such completion taken as the actual wages paid, with the addition of, e.g., 25 per cent. for oncost and a further percentage, e.g., 10 per cent. of the wages and oncost. Provision in such circumstances should be made for arbitration in the event of any dispute as to the cost of completion. Similarly, where all contracts are not to be taken over, it is useful to provide that, "with regard to contracts on the books of the sellers, but not in process of execution at the date of sale, the company shall have the option of taking these over."

Particular
matters for
consideration.

Book debts.

In dealing with the disposition of heritable property, any rights of pre-emption in the feu-rights should not be overlooked. In some districts in Scotland it has been the practice of superiors to insert a clause of pre-emption in the original grant.

Heritable
property:
Pre-emption
rights.

Again, where leasehold subjects are dealt with, inquiry should be made to ascertain that no impediment exists to the assignation by the tenants of any lease in favour of the company, or that the consent of the lessors will be given where it is a condition in the lease of the right to assign. Particularly, where reconstruction is mooted, the position of this matter should be investigated and negotiated before any formal resolutions are passed or made public. It may be desirable to provide for the contingency of refusal, *e.g.*, "The sellers shall use their best endeavours to obtain the consent of the landlord to the sale to the company, and in the event of his consent

Leases.

General
Notes.Formation
Agreements.English
leases.

"not being obtained to the satisfaction of the solicitors of the company within three months after the date hereof, this agreement in the option of the company shall become null and void, except that the sellers shall be bound to free and relieve the company of all the preliminary expenses connected with the formation of the company, including the expenses incurred, whether prior or subsequent to the date of sale, in connection with the arrangements for flotation and other expenses incident thereto, and also the expenses of winding up the company." In reference to English leasehold subjects, where there is a restriction upon the assignment of the lease without licence, the sellers are usually taken bound, in the event of no licence being procured within a stated period, "to execute in the option of the company a declaration of trust of the premises in favour of the company, or otherwise deal with the same as the company shall direct." It is also of importance in the case of reconstruction to make inquiry as to the existence of any clause of irritancy in leases or other property rights intended to operate in the event of liquidation. The formal liquidation of a company with a view to the formation of another company is outwith the spirit of such irritant clauses, but it would fall within their letter. Inquiry on this matter must be made timeously and before liquidation is resolved upon, so that an arrangement may be made with the lessor or other person interested for the irritancy not being enforced. It is not likely that feu rights will give any trouble in this respect. It is also material for the purpose of maintaining a sale agreement in full force, so far as not otherwise implemented, to insert a clause in any conveyance of property to the intent that the agreement for sale "is reserved in full force and effect so far as unimplemented." Such a precaution is necessary to guard against the supersession of the agreement as a "prior communing" by the execution of the later conveyance under the law as settled in *Orr v. Mitchell*, 1893, 20 R. (H.L.) 27.

Personal
service
contracts.

Personal contracts of service are not assignable in the absence of provision therefor, and their position, where of moment, is a matter for careful investigation. Particularly, it is of interest to ascertain the duration of such contracts, and under what extent of notice they can be terminated. The sellers may be placed under a guarantee, *e.g.*, "that no employee has a contract of service which is not terminable on a month's notice or less."

Competition
by sellers.

A company in the general case ought also to be protected against competition by the sellers, and this is usually provided for by the introduction of restrictive clauses applicable to the particular circumstances. Instances of such clauses are given in the Forms. Occasionally, the sellers are placed also under obligation to abstain from selling their holding of shares or a proportion thereof for a definite period.

The draughtsman may easily adapt any of the Forms to cases of more than one business being transferred or sold under the same agreement with more or less elaborate provisions, *e.g.*, for the satisfaction of the rights of managing directors of the selling companies by the issue of paid-up shares in the new company, the acquisition of shares in foreign companies held by interested members of the selling companies, and working in co-operation with them. Further, where part only of the share capital of a selling company is paid up, it will be essential to reserve from the subjects of sale "the uncalled capital of the old company," or as the case may be.

General
Notes.

Formation
Agreements.

Adaptation of
Forms to cir-
cumstances.

The 76th section of the Act provides for the making of contracts by companies. The first branch of sub-section (1) provides that any contract which, if made between private persons, would be by law required to be in writing, and, if made according to English law, to be under seal, may be made on behalf of the company in writing under its common seal, and in the same manner may be varied or discharged. This branch has the law of England expressly in view. It is prudent in the case of agreements relating to English assets acquired by a Scottish company, or relating to Scottish assets acquired by English promoters with reference to the incorporation of a company in Scotland, to expressly provide for the solution of all questions affecting its construction or implement being regulated either by the law of England or Scotland as the parties may agree, instead of leaving the solution of such a matter to the arbitrament of the Courts, and this course is advised irrespective of the insertion of a general reference clause in the case of disputes under the agreement. The second branch of sub-section (1) provides that any contract which, if made between individuals, would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and its variation or discharge is subject to the same conditions. The third branch of sub-section (1) refers to parole or oral agreements. Parole agreements may include in English law agreements not under seal, but the term "parole" in Scots law refers to oral agreements only. The second sub-section enacts that all contracts made according to the section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs, executors, or administrators, as the case may be. The third sub-section specially applies to Scotland, and provides that any deed to which a company is a party shall be held to be validly executed in Scotland on behalf of the company if it is executed in terms of the leading provisions of the section, or is sealed with the common seal of the company, and subscribed on behalf of the company by two of the directors and the secretary of the company, and that such subscription on behalf of the company

Contracts by
companies
and their
execution.

General
Notes.
—
Formation
Agreements.

shall be equally binding whether attested by witnesses or not. The common seal of the company is made the main characteristic of the execution of a contract by a company where the contract is not made by agents on its behalf. Accordingly, where Articles of Association provide for the execution of deeds on behalf of a company by one director only and its secretary, its execution of the deed under its common seal would validate the deed under the provisions of the first branch of sub-section (1) of the section.

Contract
when made.

A contract is "made," in the sense of the Act and also of the Stamp Act, 1891, when "the signature of the last necessary party is affixed." The date of that signature is its operative date. See Collins, L.J., in *Muller & Co.'s Margarine v. Commissioners of Inland Revenue*, 1900, 1 Q.B. 310, p. 319; 1901, A.C. 217.

Stamp duties

The proper stamping of sale agreements is a matter of vital importance. This is, however, achieved by the almost invariable practice of submitting the agreement to the Inland Revenue Commissioners for adjudication. Sale agreements attract *ad valorem* conveyance on sale duty. The cash or share price stated in such agreements is not necessarily always the consideration for stamp duty purposes. Frequently liabilities are taken over, and their amount must enter into the consideration for stamp duty purposes. Such assumption of the seller's liabilities, it may noted, by the way, does not *per se* make the purchaser liable to the seller's debtors. See *Henderson v. Stubbs*, 1894, 22 R. 51. It is open always to a purchasing company to exclude book debts and to come under no obligation as to the liabilities of the business it acquires, while agreeing as an aid to the preservation of the goodwill to collect the book debts and to pay liabilities as agent for the seller. In this way the *ad valorem* duty is so far avoided. The benefit of current contracts obtained by a purchasing company may also form part of the consideration upon which stamp duty is payable, and an estimate of the value of the benefit will require to be made. It is desirable to specify particular sums as the consideration for particular subjects, *e.g.*, loose plant, stock-in-trade, or money, and the like, which pass by mere delivery, or bills of exchange, including promissory notes, &c., which pass by endorsement. Stamp duty is not attracted in any of these instances, but the Inland Revenue may require to be satisfied that the proper values are stated. Marketable securities are exempt from the operation of the 59th section of the Stamp Act, 1891, in reference to agreements of the nature here dealt with. The stamp duty in respect of their sale does not fall to be paid until the transfers thereof are executed. In cases of reconstruction, *ad valorem* conveyance on sale duty except in certain circumstances is not exacted in practice. See Alpe on the Law of Stamp Duties, 15th edition, 1919, p. 135. Expenses paid by the company under the provisions of sale agreements

may fall to be included in the consideration in respect of which stamp duty is payable. It is customary and desirable to pay the whole *ad valorem* stamp duty in respect of the sale agreement and have it impressed thereon, to have the conveyances of heritable property impressed with a 10s. deed stamp only, and to have all the deeds adjudicated and denoted as duly stamped. Company lawyers, intimately acquainted with the Stamp Act, 1891, may save legitimately for their clients considerable expense, and practitioners generally in this connection may refer usefully to treatises dealing with stamp duties and in particular Alpe on the Law of Stamp Duties, 15th edition, 1919, p. 133 *et seq.* See also Girvan on Partnership, 1914, pp. 24 *et seq.* Practitioners may find it useful when dealing with the formation of a company to refer to the Special Note upon professional fees, p. 429.

General
Notes.

Formation
Agreements.

The formation of a private business into a limited company has many advantages, of which the limitation of liability for debts of the company to the extent of the shareholding interest is the chief; but incorporation also introduces some disadvantages, notably with regard to the treatment of profits. Dividends are liable to taxation or enter into calculation for income tax assessment purposes as unearned income. Registration also implies more or less publicity, but in the case of private companies it may be discounted as a prejudicial factor to any appreciable extent. But, disregarding these and the expenses and stamp duties attendant upon formation, the undoubted advantages of incorporation more than counterbalance any disadvantage.

Advantages
and disadvantages
of incorporation.

FORMATION AGREEMENTS.

I. AGREEMENT FOR SALE OF PARTNERSHIP BUSINESS
TO COMPANY.

Form No. 10.

AGREEMENT [made this day of , 1919]
between A B, C D, E F, and G H, all manufac-
turers at Mills, in the county of
 (hereinafter called "the sellers"?),
of the first part; I J, manufacturer, residing at
 (hereinafter called the second
party), of the second part; and ;
Limited, incorporated under the Companies Acts,
1908 to 1917, and having its registered office at
 (hereinafter called "the Com-
"pany") of the third part.³

The parties, considering that the sellers and the second party have been for some years associated as partners or otherwise interested in the firm of _____, manufacturers, at _____ Mills, in the county of _____; that the

¹Borrowing from English practice, it is convenient, where practicable, in many cases to introduce the date of the deed here. When this course is followed, the testing clause may run simply as follows:—“IN WITNESS WHEREOF, the parties hereto have executed these presents in manner underwritten the day and year first above mentioned.”

2“ Vendors ” in place of “ sellers ” has persistently appeared in Scottish agreements through the use of English forms. There is no reason why Scottish practitioners should not use “ sellers.”

³The basis of this Form related to the sale of a business involving a price of over £200,000. The Form illustrates the general provisions, and at the same time gives an instance of a specialty in the case of one of the partners not owning any part of the partnership property. If there are no specialties, the particular provisions relating to such a contingency can be omitted, and the company will become the Second Party. The business sold may be the property of an individual, and may be carried on under no *pseudo*-partnership style or any descriptive name. The Form can be easily adapted to such a situation.

contract of co-partnership, dated _____, and entered **Form No. 10.**
 into between the sellers on the one part and the second party **Sale of**
 on the other part, under which such firm has latterly been **Partnership**
 carried on, has been dissolved as at the 31st day of December, **Business.**
 1919; that the sellers and the second party have resolved upon
 the terms and conditions hereinafter contained to sell their
 business and the mills, rights, and others hereinafter mentioned
 or referred to now belonging absolutely to the sellers, as at the
 First day of January, 1920, to the company; and that the
 company has been incorporated for the purpose, *inter alia*, of
 entering into this agreement for the purchase of such business,
 mills, rights, and others, and of obtaining the benefit of the
 obligations of the sellers and the second party as hereinafter
 provided.

Therefore the parties hereto have agreed and do hereby agree
 as follows:—

First.—The sellers sell, convey, and assign, with the con-
 currence of the second party, to the company, and
 the company buys and takes over from the sellers as
 at [the close of] the first day of January, 1920,¹ the
 whole business, assets, and goodwill of the said firm
 of _____, at _____ Mills
 aforesaid, together with the said mills and all other
 lands, leases, water rights, and other heritages
 belonging to the said firm, the whole machinery,
 plant, and utensils connected with the said mills,
 business, and others, all patent rights, trade marks,
 and trade names, the whole stock-in-trade, book
 debts, bills receivable, bonds or other securities,
 bank balances and whole other debts and claims,
 cash in hand, and generally the whole heritable and
 moveable property, assets, and effects of the said
 firm of _____ as appearing in the
 books thereof as on the _____ day of January,
 1920,² with the benefit of all current contracts, in
 so far as assignable on the part of the said firm,

¹It may be convenient to describe the date as “(hereinafter referred to as the date of sale [under these presents]),” and to substitute this phrase throughout for the stated date.

²Sometimes a schedule of the items generally or particularly sold is annexed, but unless it is to be detailed with great particularity, a schedule is unnecessary.

Form No. 10.

Sale of
Partnership
Business.

with agents, clerks, travellers, workmen, and others.¹

Second.—The sale shall be held to have taken effect as on and from the first day of January, 1920, and all transactions which have taken place since that date shall be held to have taken place on account of and for the benefit of the company.

Third.—The consideration or price payable by the company for the subjects of sale shall be sterling.²

Fourth.—The company in payment and satisfaction of the price binds itself to allot and issue to each of the sellers and to the second party by their direction shares of each of the company, all credited as fully paid up. The company, however, shall be bound to allot such number of shares, not exceeding , to the nominees of the sellers as they may direct. The whole parties hereto shall enter into and file agreements in reference to the said shares in conformity to and compliance with

¹ A portion or branch of any business may be sold and described, *e.g.*, “the engineering branch of the business of the First Parties and the following assets thereof, namely:—

- “ 1. The machinery, plant, tools, fittings, patterns, designs, core boxes, &c., specified in the inventory set out in the first schedule hereto.
- “ 2. The whole raw material in stock in connection with the said branch of the business of the First Parties at the date of sale.
- “ 3. The goodwill of the said branch of the business of the First Parties (but expressly excluding the right to use the name of the First Parties in any manner of way) and all registered trade marks, labels, patents, &c., if any, pertaining exclusively to such branch.”

² It will be obvious from a reference to the eighth clause that for stamp duty purposes the price here stated is not the whole consideration. The discharge of liabilities under the eighth clause is part of the consideration and assessable to stamp duty. It is usual, however, to submit the deed for adjudication. In some cases the price of all or part of the subjects of sale may not be ascertained without provision for valuation or reference. Raw material may be sold, *e.g.*, at cost or the market price by weight at the date of sale, whichever is less to be determined, failing agreement, by a trade expert. Where no price is paid in respect of goodwill, this may be usefully stated.

section 88 of the Companies (Consolidation) Act, 1908. The company shall have no concern with the rights of the sellers and the second party *inter se* in the consideration or price, nor with any consideration (if any) as between the sellers or any of them on the one hand and their nominees or any of them on the other hand, but the company shall be fully exonerated by allotting and issuing the said shares in terms of this agreement.¹

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Sale of
Partnership
Business.

Fifth.—In respect of interest upon the said consideration or price, the company shall further pay to the parties who are the registered holders of the said shares on the 31st day of December, 1920, such a sum as will represent the same proportion of the whole divisible profits of the business carried on by the company for the year 1920 that the period from the first day of January, 1920, until the day when the said shares begin to carry dividend bears to a whole year.

Sixth.—The sellers and the second party shall be bound on the allotment and issue to them or the nominees of the sellers of the said shares to grant, execute, and deliver to the company all dispositions, conveyances, and other deeds requisite for vesting the company in the subjects of sale and for giving to the company the full benefit of the obligations herein undertaken by the sellers and the second party.

Seventh.—The company shall accept the titles of the sellers to the subjects of sale as they severally stand [subject to all the conditions and servitudes contained in the title deeds or otherwise affecting the same], and shall not object thereto on any ground whatever, nor to the conveyances or other deeds being granted direct to the company by the sellers as trustees for the said dissolved firm of , and the company shall not be entitled to call upon the sellers to pay any compositions to superiors, or

¹It is proper to file this agreement itself with the Registrar, together with any letters of nomination connecting the sellers with the ultimate allottees of the shares.

Form No. 10.

Sale of
Partnership
Business.

Variation.

to furnish or complete any searches of incumbrances.¹

or

Seventh.—The sellers shall give the company a good marketable title to the several subjects of sale and in particular to the heritable subjects of sale, subject to any servitudes, conditions, and restrictions contained in the title deeds thereof, or otherwise affecting the same; [*or* subject to any servitudes affecting the same and subject in all respects to the terms of the title deeds], with warrandice of such subjects as free from all pecuniary burdens, except such as are incident to tenure [and from ground annuals²] [and except the bond and disposition in security for £ , dated , and recorded (*state when and where*), which it has been arranged shall transmit against the company]; and the sellers shall furnish full searches for the period of forty years, which searches shall show clear records in all cases [excepting as above].

Eighth.—The company shall pay and discharge or repay so far as already paid the whole bills payable, open accounts, and other obligations and liabilities of whatever description of the said firm of

as at the first day of January, 1920,³ and shall indemnify the sellers and the second party against all proceedings, claims, and demands in respect thereof, and as and from the said date the company shall perform, implement, and fulfil the whole current contracts applicable to the said business, including all leases or tenancy agreements (if

¹The delivery of a search of incumbrances showing the subjects of sale free from incumbrances may be, of course, made a condition of the contract. The purchasing company, where independent of the sellers' influence and advised by its own solicitors, may insist upon a marketable title. In such circumstances the alternative clause may be substituted.

²A ground annual is not in form a burden incident to tenure, but in practice it is so treated.

³It may be of advantage to specify in detail any sum to be paid by the company to the sellers themselves, *e.g.*, as due according to the last balance sheet by the firm to the partners.

any), and all contracts with agents, clerks, travel-
 lers, workmen, and others, and indemnify the sellers
 and the second party against all proceedings, claims,
 and demands in respect of the said contracts.¹

Form No. 10.
 Sale of
 Partnership
 Business.

Ninth.—All books containing a record of the transactions of the said firm of _____, so far as in the possession or under the control of the sellers, shall be delivered to and retained by the company; but the sellers and the second party and their respective representatives, and all others having legal interest, shall be at all times entitled to reasonable access thereto.²

Tenth.—Each of the sellers and the second party hereby binds himself never to disclose any information relating to any details or any matter which is or may be in the nature of a secret or mystery of trade or manufacture of the said business sold hereunder, or of the business of the company, or to divulge any matter of a confidential character relating to the said business sold hereunder, or to the business of the company.

Eleventh.—None of the sellers nor the second party at any time hereafter shall either solely or jointly with or as manager or agent for any other person or persons or company or companies directly or indirectly carry on or be engaged or concerned or interested in any business such as that hereby agreed to be sold, nor permit nor suffer their names or any of their names to be used or employed in carrying on or in connection with any such business, either in the United Kingdom or abroad, where, by so doing, they or any of them might directly or indirectly interfere or compete with or injure or prejudice the business of the company, save so far as any of them shall as members of the company be

¹ As to contracts of service, see Clause Third of Form No. 11, p. 387.

² “All others having legal interest” is unnecessary. The rights of third parties cannot be prejudiced.

Form No. 10.

Sale of
Partnership
Business.

interested or as officers of the company be engaged in the business of the company.¹

Twelfth.—In the event of the sellers or the second party directly or indirectly contravening either of the two preceding articles, then without prejudice to the right of the company to apply to the Court for interdict, the contravening party shall be liable to pay to the company the sum of sterling for each act of contravention, said sum being hereby expressly declared to be pactional and not penal.

Thirteenth.—The second party hereby binds and obliges himself to act as managing director of the company for at least five years from the first day of January, 1920 [without any remuneration for so doing], and to devote all his time and attention to the duties of that office. If prevented by illness or other incapacity from discharging the duties of managing director during that period, the second party binds and obliges himself to provide such a sum as may be required, not exceeding £ per annum, or the amount for the time being receivable as dividend on shares of the company [*being the quota allotted to him*] (whichever shall be the less sum) as and by way of remuneration for a substitute in office during the period of his own retirement previous to the expiry of the said period of five years.²

¹The restriction against competition may be made more definite, e.g., "The seller [without prejudice to any obligation implied by reason [*or arising out*] of the sale] binds himself that he will not during the period of [ten] years from the date hereof either solely or jointly with or as manager or as agent for any other company or person, directly or indirectly carry on or be engaged or concerned or interested in any business carried on within a radius of [fifty] miles from the General Post Office [Glasgow], of a [*state the nature of the business*] or a dealer in [or any component parts thereof], or permit or suffer his name to be used or employed in any way in connection with any such business within the said radius, save in so far as a director, officer, servant, or agent of the company, he shall be employed in the business of the company."

²Sometimes a provision is made to the effect that the seller, without undertaking the duties of a managing director or manager, "agrees to introduce the company to his customers and to do his

Fourteenth.—Notwithstanding the terms of the immediately preceding article, it is hereby expressly provided that if and so soon as a transfer or transfers at the least of _____ shares of the company, which shall have been transferred or disposed of by will by the sellers to any of their or his wives, sons or grandsons, daughters, nephews or nieces, brothers or sisters, are registered in the books of the company in the name or names of any such person or persons, the foregoing obligation upon the second party to act as managing director of the company shall *ipso facto* cease and determine in his sole and absolute option.

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Sale of
Partnership
Business.

Fifteenth.—The second party, while acting as managing director as aforesaid, shall be deemed to have had delegated to him all the powers and authorities which, under Article _____ of the Articles of Association of the company, the directors of the company are empowered to delegate to a managing director, and so long as the second party shall continue duly to discharge the duties of that office, he shall be exempt from control or interference in their discharge save as permitted by the Articles of Association.¹

Sixteenth.—If the company, in breach of the preceding Article, purport to interfere with the rights of the second party thereunder, whether in accordance with altered Articles of Association or not, the second party in his sole and absolute option shall thereupon be entitled either to resign office as managing director and recover from the company compensa-

utmost to secure them for the company, and to give to the company for [state period] what assistance he can in the general supervision of the business [without being bound to devote any particular time, or to undertake any particular duties in the way of attending periodically at the offices, showrooms, and works of the company], and giving the benefit of his advice to the company and the officials.” For such services an honorarium may be provided at the rate of so much per annum, and if the seller acts as an ordinary director of the company, such honorarium may be fixed as covering his fees in that capacity.

¹It is common to make any arrangement with a managing director the subject-matter of a separate deed.

Form No. 10.

Sale of
Partnership
Business.

tion in respect of his loss thereof, or to apply to the Court to interdict the company in accordance with his rights as defined herein.

Seventeenth.—The whole expenses of and incident to the formation and incorporation of the company, this agreement, the carrying out of the same, including stamp duty, and the expenses of the conveyances and other deeds to be granted by the sellers or others hereunder, shall be borne and paid by the company.

Eighteenth.—In the event of any difference of opinion arising between the parties hereto concerning these presents, or the construction hereof, or any matter in any way connected with these presents or the operation or implement thereof, or the rights, duties, or liabilities of the parties hereto in connection with the premises, then and in every or any such case the question or matter in difference shall be referred to the amicable decision of _____, whom failing _____, as sole arbiter [whose decision or decisions shall be final and binding on all parties]¹

Nineteenth.—These presents are intended to operate as an agreement only, and not as a conveyance, transference, or assignation,² and the parties hereto consent to the registration hereof for preservation and execution. In Witness Whereof³ these presents,

¹ The bracketed portion is implied and is frequently omitted. In the deed from which this Form was taken, the reference was made to two well-known English company lawyers. But this does not appear to be convenient or necessary in the case of Scottish companies and of purely Scottish deeds.

² This provision has in view the stamping of the actual conveyances or assignments of heritage or other assets with the stamp duty appropriate to the particular subjects conveyed or assigned.

³ The testing clause or testimonium may be shortened, as already indicated, and the usual attesting particulars may be made part of the signatures of the witnesses, *e.g.*, "Sealed with the common seal of [name of company] and subscribed for and on its behalf by _____, two of its directors, and by _____, its secretary," or in case of a partnership, "subscribed [or signed] by the said [name of firm] (the signature of the firm being adhibited by the said _____) and by the said _____ and _____, all in the presence of [signature and designation of two witnesses]. Witnesses are not essential to the company execution.

consisting of this and the preceding pages written Form No. 10.
 (so far as not printed) by , clerk to Sale of
 , are subscribed in duplicate Partnership
 by the said A B, C D, E F, G H, and I J, and for Business.
 and on behalf of the said ,
 Limited (*the company*), by the said A B, one of the
 directors, and the said I J, the secretary of the said
 company, and are sealed with the common seal of
 the said company, all at , on the
 day of , 1919, before these
 witnesses, &c.

II. AGREEMENT FOR SALE OF BUSINESS BY ONE COMPANY TO ANOTHER COMPANY.

Form No. 11.

AGREEMENT between The

Limited, incorporated under The Companies (Consoli-
dation) Act, 1908, on the day of
 1910 (hereinafter called "the Old Company"), *of the*
first part; and The ,
Limited, incorporated under The Companies Acts,
1908 to 1917, on the day of ,
 1919 (hereinafter called "the New Company") *of the*
*second part.*¹

Whereas the Old Company [and its predecessors] have for many years carried on business as wholesale merchants and exporters and importers; and

Whereas the Old Company has acquired as at the 31st day of December, 1919, other businesses in of a similar character; and

¹As to stamp duties on conveyance in cases of reconstruction, see *Alpe on the Law of Stamp Duties*, 15th edition, 1919, p. 135.

Porm No. 11.

Sale of
Business :
One Company
to Another.

Whereas the Old Company has resolved to sell the whole of its business, rights, property, and assets connected therewith as at the 31st day of December, 1919 (hereinafter referred to as "the date of sale" to the New Company); and

Whereas the share capital of the New Company is £200,000, divided into 100,000 seven per cent. cumulative preference shares of £1 each and 100,000 ordinary shares of £1 each; and

Whereas it has been arranged that the terms and conditions of sale should be settled by these presents¹:

Therefore the parties have agreed and do hereby agree as follows, viz. :—

First.—The Old Company shall sell and the New Company shall purchase as at the date of sale—

(*First*) The business and the whole property and assets, heritable and moveable, wherever situated, of the Old Company, including without prejudice to the said generality, the goodwill of the business of the Old Company, and the whole of the heritable [or freehold and leasehold] property, buildings, stores, and fixtures and fittings thereof at _____, the trading vessel, stock-in-trade, and book debts of the Old Company;

(*Second*) The business of A B, at _____, with the goodwill thereof, and the whole buildings, stores, trading vessels, stock-in-trade, book debts, and other assets pertaining thereto;

(*Third*) The business of C D (*similarly*);

(*Fourth*) The eight trading vessels which belonged to E F, _____, with the whole gear and appurtenances thereof; and

(*Fifth*) The whaling station at _____, purchased from the _____ Association; and all hereinafter referred to as "the subjects of "sale."

¹The sale by the company of its whole business involves its winding up, and sometimes this is expressly stated, *e.g.*, "Subject to the winding up of the old company."

Second.—The price shall be £157,000, and shall be payable as follows:—

Form No. 11.
Sale of
Business:
One Company
to Another.

In cash, the sum of - - - - £26,000

By the allotment and issue by the New Company to the Old Company or its nominees of 87,000 ordinary shares of the New Company of £1 each, to be numbered 1 to 87,000 inclusive, and deemed for all purposes to be fully paid up, representing - - - - £87,000

By the allotment and issue by the New Company to the Old Company or its nominees of 44,000 preference shares of the New Company of £1 each, to be numbered 1 to 44,000 inclusive, and deemed for all purposes to be fully paid up, representing - - - - £44,000

£157,000

The said sum of £26,000 shall bear interest at the rate of per centum per annum from the date of sale until paid.

Third.—The New Company shall be entitled to the benefit of all actions and proceedings at the instance of the Old Company, and be entitled to use the name of the Old Company in all actions and proceedings in connection with the subjects of sale or necessary for recovering or obtaining possession thereof, or of any portion thereof, and of all contracts of sale, purchase, service or employment, insurance or otherwise connected with the subjects of sale in so far as such contracts are assignable, and all the books of the Old Company, together with all writs, vouchers, and documents belonging to it, or to which it has right, subject to such use thereof as may at any time become necessary or be required by or for the Old Company, shall be transferred to the New Company. The New Company will free and relieve the Old Company of and from all costs and expenses

Form No. 11.

Sale of
Business :
One Company
to Another.

incurred in connection with any of the said actions or proceedings.¹

Fourth.—The New Company shall take over all the liabilities of the business of the Old Company and all the liabilities connected with the businesses of the said A B and C D as at the date of sale, and the Old Company undertakes that these liabilities do not exceed £75,000, but the Old Company shall pay and satisfy (so far as not already done) the considerations payable to the said A B, C D, E F, and the Association, and free and relieve the New Company thereof.²

Fifth.—Upon payment of the price, the Old Company undertakes to convey, assign, transfer, and make over to the New Company the subjects of sale, and to execute and deliver to the New Company as and when required by it all formal and valid conveyances and assignments or other deeds required for vesting it with the subjects of sale according to the nature thereof.

Sixth.—The New Company shall pay all preliminary expenses connected with the formation of the New Company, and the issue of its share capital, and the whole expenses of the said conveyances and assignments or other deeds [and of this agreement], and also the whole expenses, whether incurred before or after the date of sale, connected with the arrangements for the flotation, the acquisition of the said businesses, and the arrangements for a branch at

¹In regard to contracts of service, &c., it is sometimes stipulated—“In so far as such contracts cannot be assigned, the sellers shall be bound to communicate to the company all benefits, sums, and profits derived therefrom, the company on the other hand being bound to relieve the sellers of all losses, costs, and expenses arising in connection therewith.” Upon the assignability of contracts for personal services, and the considerations to be had in view by the various parties interested when the sellers dispose of their business, reference may be made to the instructive case of *Ross v. M'Farlane*, 1894, 21 R. 396. The consent of the other parties to all such contracts is necessary, and in the case of insurance especially the policies ought to be endorsed by the insurers.

²The assumption of these liabilities by the purchasing company enters into the consideration for stamp duty purposes. See note to Form No. 10, p. 378.

[Bordeaux], and of all investigations and other charges incident thereto.¹

Form No. 11.
Sale of
Business :
One Company
to Another.

Seventh.—All feu-duties, rents, rates, taxes, and other annual charges payable in respect of the ownership and occupancy of the heritable properties and interest on bonds or mortgages secured thereon, or on bank overdrafts, and premiums of insurance of any kind, and all other annual payments connected with the subjects of sale for the year current at the date of sale, shall be apportioned between the Old Company and the New Company according to the periods of possession, and the parties shall relieve each other accordingly.

Eighth.—In respect that the business of the Old Company acquired as at the date of sale has been carried on under the name of the Old Company, and will be so carried on until this agreement has become binding on the New Company under Article Tenth hereof, the New Company shall adopt all transactions entered into by the Old Company (other than contracts for the purchase of any portion of the subjects of sale) between the date of sale and the date when this agreement becomes binding on the New Company; and the New Company shall have right to all the benefits arising therefrom and shall free and relieve the Old Company of all outstanding debts and liabilities contracted by it in connection with its business after the date of sale, under the reservation that all dividends declared in respect of the year 1919 shall be paid by the Old Company.²

¹It is usual to provide expressly for the "expenses of and incident to this agreement" being paid in the same way. Form No. 11 is based upon an agreement which did not so provide. The expenses of such an agreement in the absence of any provision would fall to be borne equally by the parties to the agreement. It is preferable, however, to make express provision for such equality, *e.g.*, "The whole expenses of these presents and of the conveyances of the heritable subjects and other necessary assignations or deeds, including stamp duties, adjudication thereof, and revising fees, shall be payable as to one-half by the Old Company and as to the other half by the New Company."

²The agreement forming the basis of this Form related to a Continental trading company with a capital of over £100,000, and being a public company, the agreement did not become absolutely binding until the issue of the certificate to commence business. If

Form No. 11.

Sale of
Business:
One Company
to Another.

Ninth.—The Old Company undertakes, if so required by the New Company at or within six weeks after the completion of the purchase under these presents, to procure (1) that the said A B will bind himself to act as manager of the New Company of its trading business at _____ until first January, 1923, at a yearly salary of _____, and a commission of _____ per centum on the net profits of the branch business, and will enter into an agreement binding in accordance with [Siberian] law with the New Company to that effect;¹ (2) that the said C D will bind himself to act as manager of the New Company of its trading business at _____ until first January, 1924, at a yearly salary of _____ and a commission of _____ per centum on the net profits of the branch business, and will enter into an agreement, binding in accordance with [Russian] law, with the New Company to that effect; and (3) that _____, [Bordeaux] will enter into an agreement, binding in accordance with [French] law, with the New Company to act as the Company's representative in France for the sale of the company's commodities at a yearly salary of £ _____ and a commission of _____ per centum on the net profits arising from the sale of such commodities in [France], and that he will apply for 3000 preference shares of the New Company in terms of the prospectus about to be issued.²

Tenth.—These presents are conditional upon the New Company obtaining a certificate to commence business within one month from the date hereof [and are entered into subject to the passing and confirming of a special resolution by the Old Company for voluntary liquidation and to the passing of a resolution by the Old Company approving

the purchasing company is a private company, no such certificate is required, and the agreement operates from its date, as a private company can transact all business as soon as registered.

¹The precise terms of such service agreements may be usefully scheduled to the agreement.

²If the purchasing company is a private company, the reference to the prospectus will be omitted in reference to any such arrangement.

of this agreement and instructing the liquidator to carry it into effect, and all within one calendar month of the date, or last date, if more than one, of these presents; otherwise, it shall be in the option of either party thereafter by written notice to declare this agreement at an end].¹

Form No. 11.

Sale of
Business :
One Company
to Another.

Eleventh.—The parties hereto consent to the registration hereof for preservation and execution.

In Witness Whereof these presents, consisting of this and the preceding pages [along with the two schedules annexed hereto], are executed in triplicate at , on the day of 1920, by being sealed with the common seal of (*the Old Company*) and subscribed for and on its behalf in terms of its Articles of Association by and , two of its directors and , its secretary, and being sealed with the common seal of (*the New Company*) and subscribed for and on its behalf in terms of its Articles of Association by , one of its directors and , its secretary, all before these witnesses, , and , both clerks to .

III. AGREEMENT FOR SALE BY LIQUIDATOR OF COMPANY'S BUSINESS AND ASSETS TO NEW COMPANY.

Form No. 12.

AGREEMENT between A B & Company, Limited, incorporated under The Companies Acts, 1862 to 1886, and having its registered office at Renfrew, and now in liquidation (hereinafter styled "*the Old Company*") and C D, chartered accountant, Glasgow, the liquidator thereof (hereinafter referred to as "*the liquidator*"), *parties of the first part* [and] A B & Company, Limited, incorporated under The Companies

¹The contingency of the agreement becoming abortive should entail the Old Company paying the expenses so thrown away, e.g., the formation and registration of the New Company, and of and incident to the agreement of sale.

Form No. 12.

Reconstruction : Sale by
Liquidator.

Acts, 1908 to 1917, and having its registered office at Renfrew (hereinafter styled "the New Company"), *parties of the second part* [and G H, engineer, Renfrew (hereinafter styled the third party)].¹

Whereas the Old Company was incorporated in 1888 with a share capital of £100,000, divided into 10,000 shares of £10 each :

And whereas 4500 shares of the Old Company have been issued and stand credited in the books thereof as fully paid up :

And whereas by special resolution of the Old Company passed and confirmed at extraordinary general meetings thereof held respectively on the 1st and 17th days of February, 1919, it was resolved (first) that it was desirable to reconstruct the Old Company, and accordingly that the Old Company be wound up voluntarily, and that the liquidator should be and was thereby appointed liquidator for the purposes of such winding up; (second) that the liquidator should be and was thereby authorised to consent to the registration of a New Company bearing the same name as the Old Company, with a Memorandum and Articles of Association which had already been prepared with the knowledge² and approval of the directors of the Old Company; and (third) that the draft agreement referred to in the special resolution (being the draft of these presents) should be and the same was thereby approved of; and that the liquidator should be and was thereby authorised pursuant to section 192 of The Companies (Consolidation) Act, 1908, to enter into an agreement with the New Company in terms of the said draft, and to carry the same into effect without modification, or with such modification as might be deemed expedient :

And whereas in accordance with the said special resolution, the New Company has been registered and incorporated under The Companies (Consolidation) Act, 1908, with a capital of

¹The Third Party is made a party to this agreement because of the eleventh clause of its provisions; but where there is no such arrangement, the agreement will be simply between the Old and New companies.

²" Knowledge " is to be preferred in place of the use of the word " privity."

£400,000, divided into 20,000 six per cent. preference shares of £10 each and 20,000 ordinary shares of £10 each: **Form No. 12.**

Reconstruction: Sale by Liquidator.

Therefore it is hereby agreed as follows, namely:—

First.—The Old Company and the liquidator agree to sell and transfer to the New Company, and the New Company agrees to purchase from them as a going concern the business of the Old Company, with the goodwill thereof and the benefit of all current trade contracts and claims competent to the Old Company thereunder, and the whole property, assets, and rights of the Old Company, including lands, works, railways, buildings, erections, machinery, and plant, whether fixed or moveable, engines, tools, stores, work in progress, stock-in-trade, patterns, designs, fittings, utensils, furniture, fixtures and moveables, material and appliances, patent rights and licences, and all other property, heritable and moveable, of whatever description and wheresoever situated belonging to the Old Company, and that as at and from the day of July, 1919 (hereinafter termed “the date of sale”), together also with all business contracts of the Old Company and agreements with their staff and employees current at that date under burden always of the due performance of the same by the New Company, but excepting from the sale hereunder all outstanding debts owing to the Old Company as at the date of sale, including debts due on plant leased from the Old Company under hire purchase agreements, and all cash, notes, bills, drafts, cheques, and balances at that date at the credit of the Old Company with bankers, agents, and others, [and the shares held by the Old Company in the Company, Limited, valued at £ .]

Second.—The New Company shall be entitled to the full and exclusive right to use the same name as that of the Old Company, namely, “A B & Company, “Limited,” and to represent itself as carrying on business in continuation of the business heretofore carried on by the Old Company and in succession thereto, and all necessary consents to the adoption

Form No. 12.

Reconstruction : Sale by
Liquidator.

of the said name shall be given by the Old Company and the liquidator.

Third.—The Old Company shall pay off and discharge all bonds and dispositions in security and debentures affecting any of its heritable subjects, including therein any leasehold subjects regarded as moveable by any foreign law; but otherwise all such subjects shall be transferred to the New Company under burden of the rents, feu-duties, and other incumbrances or charges existing over the same as at the date of sale.

Fourth.—The price or consideration to be paid to the liquidator by the New Company for the transfer of the subjects of sale shall be in part the sum of £560,000, and shall be paid or discharged to the extent of £200,000 by the allotment and issue of 20,000 ordinary shares of £10 each in the New Company as fully paid shares to the nominees of the liquidator [named in the schedule annexed hereto in the proportions and respective numbers therein specified],¹ and to the extent of the balance of £360,000 in cash in such instalments from time to time as may be mutually arranged, and interest at the rate of £5 sterling per centum per annum shall be paid by the New Company to the liquidator of the Old Company on the portion of the price payable in ordinary shares from the date of sale till the date of allotment of the said shares and on the portion of the price payable in cash from the date of sale till payment.

Fifth.—Out of the said 20,000 ordinary shares of £10 each of the New Company falling to be allotted to the nominees of the liquidator under

¹The substitution of a schedule as indicated in the bracketed portion simplifies the deed, obviates the necessity for the elaborate provisions which follow in the bracketed clauses fifth to fourteenth, both inclusive, and makes the agreement such a contract as constitutes the title of nominees to their allotments under section 88 of the Act, and falling to be filed thereunder. The other alternative mode appears to require a supplemental contract between the company and the allottees, or some one on their behalf, to be made before or after allotment, so as to constitute such title. Both methods are based on examination of actual cases. Section 192 of the Act safeguards the rights of dissentients without special provision being made therefor.

the Fourth clause hereof, every holder of shares of the Old Company (each set of joint holders being treated as one holder) shall be entitled as of right to claim an allotment to himself or herself or to his or to her nominees of so many of such shares credited as fully paid at the rate of five of such shares of the New Company for every single share held by him or her of the Old Company.

Form No. 12.
 ———
 Reconstruction:
 Sale by
 Liquidator.

[*Sixth.*—By direction of the liquidator, the New Company shall allot and issue the shares which the shareholders of the Old Company are entitled to claim in terms of the preceding article to the persons who duly claim the same.¹

[*Seventh.*—Upon the portion of the price failing to be discharged under this agreement by the allotment and issue of fully paid ordinary shares of the New Company (including shares which but for the provisions of these presents would have been distributable in fractions and shares falling to dissentient members and to other members if not timeously claimed as after-mentioned), there shall be paid by the New Company from and after the date of sale until the date when the ordinary shares begin to bear dividend interest at the rate per centum per annum equivalent to the rate per centum per annum which may be declared by the New Company on its ordinary shares for the period to , 1920, and such interest shall be paid to the parties holding such shares at the date of the ordinary meeting of the New Company at which such dividend is declared.

¹Upon the particular apportionment of shares, as put in this Form, fractions of shares do not require to be provided for. But where fractions do require to be dealt with, a provision is frequently inserted to the following effect:—"Nothing contained in this agreement shall justify any claim to the allotment of a fractional share and all shares which, but for this provision, would have been distributable in fractions, shall, failing any agreement in reference thereto, be sold by the liquidator for what they will realise, and the net proceeds of sale, after discharging all expenses of and incident to the sale, shall be divided in due proportions among those persons who would have been entitled to such fractions."

Form No. 12.

Reconstruction : Sale by
Liquidator.

[*Eighth.*—Within [ten] days from the [last] date hereof, the liquidator of the Old Company shall give notice in writing to every shareholder of the Old Company in accordance with the provisions of the Articles thereof as to notices to members, stating the number of shares which such shareholder is entitled to claim as of right under this agreement, and the time within which the claim for an allotment as aforesaid must be lodged with the liquidator, and the liquidator shall enclose with such notice a form of claim addressed to him for the signature of each shareholder.

[*Ninth.*—Every shareholder of the Old Company entitled to claim an allotment as aforesaid must claim the same within [twenty-one] days from the [last] date hereof by lodging with the liquidator a claim in writing signed by him or her for allotment of such shares, and in case of request for such allotment to his or her nominees, countersigned by such nominee or nominees, and unless such claim is made within the period and in the manner foresaid, it shall lapse, subject to the exercise by the liquidator of an absolute discretion in any particular case, and for special reasons, to extend the time for making such claim or to waive any irregularity.

[*Tenth.*—Any shares not claimed within the said period of [twenty-one] days by shareholders of the Old Company other than dissentient members may be retained by the liquidator for behoof of such shareholders entitled to claim the proceeds of sale thereof in his absolute discretion, and may be sold for what they will realise, and the net proceeds of sale thereof, after paying all expenses of and incident to the sale, shall be distributed rateably amongst such shareholders of the Old Company as would, if they had claimed, have been entitled to such shares in accordance with these presents.

[*Eleventh.*—If in order to carry such sale into effect the liquidator requires to purchase the share of any member of the Old Company, then and in every or any such case, the shares to be allotted to the nominees of the liquidator in respect of the interest of such member shall be sold by him for what they will realise, and the New Company shall pay to the liquidator for the purpose of effecting such purchase such further sum over and above the net proceeds of such sale remaining after paying all expenses of and incident to the sale as shall be determined by arbitration between the Old Company or the liquidator and such member, or by agreement made with the consent of the New Company between the liquidator and such member to be the price payable in respect of such purchase.

Form No. 12.
Reconstruction : Sale by Liquidator.

[*Twelfth.*—The liquidator shall be entitled to make any sale of shares in virtue of the foregoing provisions either by public roup or private contract, and either together in lots or together upon such terms and conditions and in such manner as he shall in his absolute discretion think fit, and, upon the request of the liquidator, the New Company shall be bound to allot to the purchasers of such shares the shares so sold to them respectively credited as fully paid.

[*Thirteenth.*—Before or upon the allotment and issue of any shares as fully paid under these presents, or at least within one month thereafter, this or some other contract shall be filed with the Registrar of Joint Stock Companies with reference thereto in compliance with the provisions of section 88 of The Companies (Consolidation) Act, 1908.

[*Fourteenth.*—Notwithstanding the terms of these presents, if in order to carry the sale under this agreement into effect, it would be necessary to purchase the interest of members of the Old Company of more than [£60,000] in

Form No. 12.

Reconstruction:
Sale by
Liquidator.

nominal value, the New Company shall have the option by notice in writing addressed to the other parties hereto to rescind and cancel this agreement.¹

Fifth [or *Fifteenth*].—The New Company, in further consideration for the sale, shall bear and pay all the preliminary expenses, costs, and outlays connected with its formation, including the fees of the accountants, brokers, valuers, and solicitors, the printing, advertising, and circulating of its prospectus,² as well as the share capital duty, registration fees, and stamp duties falling to be paid in connection with its registration and incorporation, the transfer of the business and assets and of and incidental to any public flotation of its shares or debenture stock, or any of them, and of and incidental to the liquidation of the Old Company, including the remuneration of the liquidator, under the proviso that the Old Company shall pay the expenses of and incident to the underwriting of the issue of the preference shares of the New Company.

Sixth [or *Sixteenth*].—Notwithstanding the date hereof, the business of the New Company shall be held to have been carried on as from and after the date of sale for and on behalf of and at the sole risk of the New Company [and the New Company shall also be entitled to the benefit of and shall implement, so far as not fulfilled and current at the date of sale, all the business contracts entered into by the Old Company].³

Seventh [or *Seventeenth*].—The Old Company shall pay, satisfy, and discharge all its debts and liabilities as at the date of sale, excepting the liabilities amounting to £272,000, under current agreements with [rolling stock finance] companies, which agree-

¹Some provision would require to be made for the payment of all the expenses, incurred by the New Company and in its promotion, by the agreement being rendered abortive.

²In the case of a private company, the reference to a prospectus or public issue of shares has no place in such an agreement.

³The first and seventh clauses seem to cover sufficiently the bracketed portion, and it may be omitted.

ments and all payments requiring to be made under the same from and after the date of sale shall be taken over and fulfilled and paid by the New Company, and the Old Company shall also take over the whole responsibility connected (1) with pending litigations and any expenses incurred and to be incurred therein, and all sums recovered thereunder shall be retained by the Old Company; and (2) with the usual six or twelve months' guarantee clauses under sale contracts so far as regards plant delivered prior to the date of sale; but to preserve the continuity of the business, the New Company on behalf of the Old Company and without charge, and without any responsibility, shall collect the outstanding book debts of the Old Company and apply the same in payment of such of the liabilities of the Old Company as the liquidator may direct.

Form No. 12.

Reconstruction : Sale by Liquidator.

Eighth [or *Eighteenth*].—The New Company shall accept without investigation such title as the Old Company has to all the properties and assets, heritable and moveable, forming the subjects of sale.

Ninth [or *Nineteenth*].—The New Company shall be entitled to the benefit of all current fire insurance policies upon or relating to the properties to be transferred to it, and to any current insurances against accidents at common law or under The Employers' Liability and The Workmen's Compensation Acts. All premiums under such policies and all feu-duties, rents (including plant rents and telephone rents), interests, rates, taxes, and other annual payments shall be apportioned between the companies as at the date of sale.

Tenth [or *Twentieth*].—The New Company shall be entitled to all books of accounts and reference and all other documents, books, paper, and stationery used in connection with the business of the Old Company, and the same shall be handed over by the Old Company upon the completion of the purchase, and shall be the sole property of the New Company; but all such books and documents shall always be open for inspection by the Old Company and the liquidator during business hours.

Form No. 12.

Reconstruction: Sale by
Liquidator.

Eleventh [or Twenty-first].—The third party shall be the first managing director of the New Company, and shall hold office for the period of five years from the date of its incorporation, and so long as he continues in office as such managing director he shall devote his whole time, energies, and attention to the business of the New Company, and shall not be entitled directly or indirectly to engage in any other trade or business without the unanimous consent of the Board of the New Company, and in consideration of his services as such managing director he shall be entitled to receive a salary at the rate of [£3000] per annum, payable monthly, and that over and above his remuneration as a director, and at least three months prior to the expiry of the said period of five years the New Company, at an extraordinary general meeting, shall re-elect the third party or elect some other person or persons as managing director or directors in succession to him for such period and on such terms as the New Company at such meeting may determine.

Twelfth [or Twenty-second].—These presents are intended to operate as an agreement only, and not as a conveyance, transfer, or assignment, and for the purpose of fixing the stamp duty on this agreement, the heritable property conveyed to the New Company shall be held to be of the value of £180,000, and the moveable property transferred to the New Company shall be held to be of the value of £380,000, making a total of £560,000.¹

Thirteenth [or Twenty-third].—The validity of this agreement shall not be impeached on the ground that any of the directors of the New Company, are directors of the Old Company, or are otherwise interested in the transaction thereunder, or do not constitute an independent Board.

Fourteenth [or Twenty-fourth].—The Old Company and the liquidator on the one part and the New Company on the other part shall execute, at the expense

¹See note to Clause Nineteenth of Form No. 10, p. 384.

of the New Company, all such deeds and do all such acts and things as may be necessary or desirable for carrying this agreement into effect, including all such contracts and agreements as may be necessary with regard to the shares to be allotted and issued as fully paid up as aforesaid in order to comply with the provisions of section 88 of The Companies (Consolidation) Act, 1908. **Form No. 12.**

Lastly.—All disputes or differences arising between any of the parties hereto [regarding the true intent or meaning of these presents, or in connection therewith, or in connection with their respective rights, duties, or liabilities thereunder] [*or* regarding these presents, or the meaning or the implement thereof] are hereby referred to the decision of

, whom failing, of

, as sole arbiter in succession [*or*, *e.g.*, the Deputy Keeper of His Majesty's Signet for Scotland for the time being], whose award or awards, interim or final, shall be final and binding upon all concerned. In Witness Whereof.¹

¹Where the simpler alternative of this Form is adopted, as suggested in the note to Clause Fourth, a schedule will here follow.

APPENDICES.

I.—MEMORANDA

Memoranda
by Registrar.

IN REFERENCE TO

THE FORMATION AND REGISTRATION OF NEW COMPANIES

AS ISSUED BY

THE REGISTRAR OF JOINT STOCK COMPANIES.

THE COMPANIES (CONSOLIDATION) ACT, 1908
(8 Edw. VII. c. 69).

JOINT STOCK COMPANIES.

MEMORANDA.

1. All returns and letters relating to the registration of Joint Stock Companies should be addressed to "The Registrar of Joint Stock Companies, Exchequer Chambers, Edinburgh." Postage on letters must be prepaid. Telephone No. 643.

FORMATION AND REGISTRATION OF NEW COMPANIES.

2. For information relative to the constitution and incorporation of companies, see Part I. of the Act.

3. When a company is being promoted it is desirable that the proposed name should be sent to the Registrar for approval two or three days before the papers are to be lodged for registration.

4. When special Articles of Association are to be registered they must be printed. Typewritten matter cannot be accepted as print.

5. Where the Memorandum of Association is not accompanied by Articles, the regulations in Table A in the first schedule to the Act become the Articles. These regulations also apply to companies registering Articles of their own in so far as those Articles do not modify or exclude the regulations contained in Table A.

Memoranda
by Registrar.

6. When special Articles are not registered, a docquet should be put on the Memorandum stating that it is registered without Articles of Association.

7. In the case of every new company it is requested that two copies of the printed Memorandum and Articles of Association and Prospectus (if any) may be sent to the Registrar at an early date after registration.

8. The Memorandum and Articles of Association must each bear a deed stamp of 10s.

9. A Statutory Declaration by an enrolled Law Agent engaged in the formation of the Company, or by a person named in the Articles of Association as a Director or Secretary of the Company, that all the requisitions of the Act in respect of registration and of matters precedent and incidental thereto have been complied with must be produced to the Registrar with the Memorandum of Association (section 17). Form No. 41.

10. Under the provisions of the Public Offices Fees Act, the Lords of His Majesty's Treasury require all fees payable in that office, or to the officers thereof, to be collected by means of stamps.

11. For the amount of Registration fees, see Tables on pp. 3 and 4.¹

12. The *ad valorem* Stamp Duty of 5s. per cent. on the nominal share capital of *any* company to be registered with limited liability, or on the amount of *any* increase of registered capital of any company now registered, or to be registered, with limited liability (section 112 Stamp Act, 1891, 54 and 55 Vict. c. 39, as amended by the Finance Act, 1899, 62 and 63 Vict. c. 9, section 7), is *in addition* to the fees and deed stamps, and must be impressed on a form of Statement of Capital provided for the purpose, which may be obtained from the Registrar. This duty is payable on the whole nominal amount of the share capital whether raised before or after the registration. Form No. 25; (increase) Form No. 26.

ADDITIONAL REQUIREMENTS WHEN A COMPANY IS NOT A
"PRIVATE" COMPANY.

13. When a prospectus is to be issued, applicants for registration must, in addition to the requirements above mentioned, also produce for registration :—

- (1) A copy of the prospectus containing the prescribed particulars duly dated and signed by every director named therein or by his agent authorised in writing. The date on the prospectus should not be a date prior to the filing of the prospectus.

¹ See p. 407 *et seq.*

- (2) The consent of every director of the company to act as such director. Form No. 42. Memoranda by Registrar
- (3) A list of the persons who have consented to act as directors of the company. Form No. 43.
- and (4) Contracts in writing duly stamped and executed by the directors to take and pay for their qualification shares (if any) where they have not signed the Memorandum for at least that number.

14. Where a company does not issue a prospectus on or with reference to its formation, it must not allot any of its shares or debentures unless there has been filed with the Registrar a statement in lieu of prospectus (section 82, Form No. 55), which must be accompanied by the consents and contracts (if any) of the Directors as above-mentioned if not already filed.

15. A company (which is not a "private" company) cannot commence business or exercise any borrowing powers until it has filed with the Registrar a Statutory Declaration in the prescribed form (No. 44A) by the Secretary or one of its Directors. The Registrar will then certify that the company is entitled to commence business (section 87).

The following provisions relating to registered Companies should be noted :—

16. Every company registered under the Companies Acts must, before carrying on business, file with the Registrar a notice of the situation of its registered office, and subsequently of any change therein. Form No. 4 ; (Change) Form No. 5.

17. Every company must file a copy of its Register of Directors or Managers, and notify from time to time any change that takes place therein. Form No. 9.

18. Every company limited by shares must hold its Statutory Meeting within a period of not less than one month nor more than three months from the date at which it is entitled to commence business. A copy of the Directors' Report ("the Statutory Report"), which must be sent to every member at least seven days before the meeting, must be filed with the Registrar immediately after it has been sent to the members. A "private" company is not required to forward or file this report.

19. Whenever a company limited by shares makes any allotment of shares, it must within a month thereafter file a return of such allotments in the prescribed form (No. 45). In the case of shares

Memoranda
by Registrar.

allotted for a consideration other than cash, the company must also file a contract in writing constituting the title of the allottee to such allotment together with any contract of sale or for services, &c., in respect of which the allotment was made. Where such a contract is not reduced to writing, the prescribed particulars (Form 52) duly stamped must be filed.

20. Every company must hold a General Meeting once at least in every calendar year, and not more than fifteen months after the holding of the last preceding General Meeting.

21. Every company, having a capital divided into shares must file annually a Return of summary of capital and list of members and directors, &c., in the prescribed form (No. 6A). Such Return is to be made up to the 14th day after the first ordinary general meeting in each year, and registered within seven days after such 14th day. All companies not "private" companies must include in the summary a statement, in the form of a Balance Sheet, giving the required particulars (section 26).

22. A copy of every Prospectus duly dated and signed must be filed on or before the date of its publication. Typewritten matter cannot be accepted as print.

23. A copy of every resolution, whether special or extraordinary, passed by a company must be printed and forwarded to the Registrar within fifteen days from the date of the resolution.

24. All documents tendered for registration must be authenticated by the written signature of an authorised officer of the company (section 117), and must be according to the approved forms, and must each bear an *impressed* Companies Registration Fee Stamp of 5s. In the case of an increase of capital, an *ad valorem* stamp must, in addition, be impressed upon the prescribed form for giving notice of such increase. Form No. 10.

25. Office copies are charged for at the rate of 6d. per sheet of 200 words, and certificates of incorporation, after the first, 5s. each. The inspection fee is 1s. for each company searched.

26. Stamps for office copies, and all the authorised forms, may be obtained by remitting the amount mentioned on page 3¹ to the Postal Telegraph Office, No. 11 Parliament Square, Edinburgh.

¹ See p. 407.

AUTHORISED FORMS.¹Memoranda
by Registrar.

No. of Form.	Description.	Per Form.	
		Stamped.	Unstamped.
		s. d.	s. d.
4	Notice of Registered Office, - - - - -	5 2	0 2
5	Change of Registered Office, - - - - -	5 2	0 2
6A	Summary of Capital, &c. (Outside Sheet), - - -	5 3	0 3
8A	Continuation Forms for No. 6A, - - - - -	...	0 1
9	Copy Register of Directors or Managers, - - -	5 2	0 2
9A	Particulars as to Directors, - - - - -	5 2	0 2
10	Notice of Increase in Capital, - - - - -	...	0 2
11	Notice of Increase in Members, - - - - -	...	0 2
14	Consent to take Name, - - - - -	5 2	0 2
15	Return of Final Winding-up Meeting, - - -	5 2	0 2
16	Special Resolution (Specimen Form), - - -	...	...
25	Statement of Nominal Capital, - - - - -	...	...
26	Statement of Increase in Capital, - - - - -	...	...
28	Notice of Conversion, &c., of Shares, - - -	...	0 2
29	Notice of Office, Colonial Registers Act, - - -	...	0 2
39	Notice of Appointment of Liquidator in Compul- sory Cases, - - - - -	5 2	0 2
39A	Notice of Appointment of Liquidator in Volun- tary Cases, - - - - -	5 2	0 2
41	Declaration by Applicant for Registration, - - -	5 2	0 2
42	Consent to act as Director, - - - - -	5 2	0 2
43	List of Persons who have consented to act as Directors, - - - - -	5 2	0 2
44	Declaration by Secretary or Director (Prospectus Cases), - - - - -	5 2	0 2
44A	Declaration by Secretary or Director (Statement in lieu of Prospectus Cases), - - - - -	5 2	0 2
45	Return of Allotments, - - - - -	5 2	0 2
45A	Continuation Forms for No. 45, - - - - -	...	0 1
52	Particulars of Contract where Shares are issued for a consideration other than cash, - - -	*5 2	0 2
53	Notice of Appointment of a Receiver or Manager, - - -	5 2	0 2
55	Statement in lieu of Prospectus, - - - - -	5 3	0 3
57	Receiver or Manager's Abstract of Receipts and Payments, - - - - -	...	0 2
57A	Notice by Receiver or Manager on ceasing to act as such, - - - - -	5 2	0 2
58	Statement by a Company relating to the Payment of Commission, - - - - -	5 2	0 2

* This Document is to be stamped as a Contract or Agreement also.

¹ It is deemed unnecessary to include Forms of temporary necessity owing to the War.

Memoranda
by Registrar.

TABLE of FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES, as contained in Table B, First Schedule, Companies (Consolidation) Act, 1908.

I. The *ad valorem* FEE on the REGISTRATION of a COMPANY having a CAPITAL divided into SHARES is, shortly, £1 a £1000 for the first £5000 of capital (minimum fee £2), 5s. a £1000 after the first £5000 up to £100,000, and 1s. for every £1000 after the first £100,000 up to £525,000, which takes the maximum fee of £50.

The following are the fees for amounts of capital of frequent occurrence :—

Where the Amount of Nominal Capital does not exceed	Fee.	Where the Amount of Nominal Capital does not exceed	Fee.
£	£ s.	£	£ s.
2,000 (Minimum Fee)	2 0	60,000	18 15
3,000	3 0	65,000	20 0
4,000	4 0	70,000	21 5
5,000	5 0	75,000	22 10
6,000	5 5	80,000	23 15
7,000	5 10	85,000	25 0
8,000	5 15	90,000	26 5
9,000	6 0	95,000	27 10
10,000	6 5	100,000	28 15
11,000	6 10	105,000	29 0
12,000	6 15	110,000	29 5
13,000	7 0	115,000	29 10
14,000	7 5	120,000	29 15
15,000	7 10	125,000	30 0
20,000	8 15	130,000	30 5
25,000	10 0	135,000	30 10
30,000	11 5	140,000	30 15
35,000	12 10	145,000	31 0
40,000	13 15	150,000	31 5
45,000	15 0	160,000	31 15
50,000	16 5	170,000	32 5
55,000	17 10	180,000	32 15
		525,000 (Maximum Fee)	50 0

For registration of any increase of capital made after the first registration of the company, the same fees per £1000, or part of £1000, as would have been payable if such increased capital had formed part of the original capital at the time of registration.

Provided that no company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than £50, taking into account, in the case of fees payable on an increase of capital after registration, the fees paid on registration.

For registration of any *existing* company, except such companies as are exempted from payment of fees, the same fee as is charged for registering a new company.

For registering any document, other than the Memorandum of Association, a fee of 5s.

For making a record of any fact, a fee of 5s.

II. FEES on the REGISTRATION of a COMPANY *not* having a CAPITAL Memoranda
divided into SHARES. by Registrar.

Where the Number of Members as stated in the Articles of Association does not exceed	Fee.	Where the Number of Members as stated in the Articles of Association does not exceed	Fee.
	£ s.		£ s.
20 - - - - -	2 0	700 - - - - -	8 0
	(Minimum Fee)	750 - - - - -	8 5
100 - - - - -	5 0	800 - - - - -	8 10
150 - - - - -	5 5	850 - - - - -	8 15
200 - - - - -	5 10	900 - - - - -	9 0
250 - - - - -	5 15	950 - - - - -	9 5
300 - - - - -	6 0	1000 - - - - -	9 10
350 - - - - -	6 5	1050 - - - - -	9 15
400 - - - - -	6 10	1100 - - - - -	10 0
450 - - - - -	6 15	1150 - - - - -	10 5
500 - - - - -	7 0	1200 - - - - -	10 10
550 - - - - -	7 5	1250 - - - - -	10 15
600 - - - - -	7 10	1300 - - - - -	11 0
650 - - - - -	7 15	1350 - - - - -	11 5

And an additional fee of 5s. for every 50 members, or less number than 50 members, up to 3100, which takes the maximum fee of £20.

For registration of a company in which the number of members is stated in the Articles of Association to be unlimited, a fee of £20.

For registration of any increase on the number of members made after the registration of the company, in respect of every 50 members, or less than 50 members, of such increase, 5s. Provided that no company shall be liable to pay on the whole a greater fee than £20 in respect of its number of members, taking into account the fee paid on the first registration of the company.

For registration of any existing company, except such companies as are exempted from payment of fees, the same fee as is charged for registering a new company.

For registering any document, except the Memorandum of Association, a fee of 5s.

For making a record of any fact, a fee of 5s.

London Stock
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Rules.

II. EXCERPTS FROM THE RULES AND REGULATIONS

OF

THE STOCK EXCHANGE, LONDON,

AS TO

SPECIAL SETTLEMENTS AND OFFICIAL QUOTATIONS.¹

Special
settling day.
Rule 150.

(1) The secretary of the share and loan department shall give three days' public notice of any application for a special settling day² in the shares or other securities of a company previously to such application being submitted to the committee, who will appoint a special settling day provided that sufficient certificates or scrip are ready for delivery.

Vendors'
shares.

(2) The committee will not fix a special settling day for bargains in shares or securities issued to the vendors, credited as fully or partly paid, until six months after the date fixed for the special settlement in the shares or securities of the same class subscribed for by the public, but this does not necessarily apply to reorganisations or amalgamations of existing companies or to cases where no public shares are issued, or to cases where the vendors take the whole of the shares issued for cash (*vide* Appendix 35 *infra*).

Official
quotations.
Rule 151.

(1) The committee may order the quotation in the official list of any security of sufficient magnitude and importance.

(2) Applications for quotation must be made to the secretary of the share and loan department, and must comply with such conditions and requirements as may be ordered from time to time by the committee (*vide* Appendix 36 *infra*).

(3) Three days' public notice must be given of every application.

(4) A broker, a member of the Stock Exchange, must be authorised to give the committee full information as to the security, and to furnish them with all particulars they may require.

Quotation
of vendors'
securities.
Rule 152.

Securities issued to vendors credited as fully or partly paid shall not be quoted until six months after the date fixed for the special settlement of the securities of the same class subscribed for by the public, nor unless a quotation for the latter is also granted.

¹ The excerpts are taken from the Rules and Regulations as published under date 1st October, 1918. In December, 1919, the Stock Exchange Committee detailed their requirements for leave to deal in securities in the absence of prior public advertisement of prospectuses. See paragraph "Leave to Deal," &c., p. 422.

² Absolute good faith must be observed in securing a special settlement. See *Gray v. Lewis—C. Lafitte*, 1873, 8 Ch. Ap. 1035.

APPENDIX 35.

SPECIAL SETTLEMENTS.

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Exchange
Rules.

Appendix 35.

Special
Settlements.

The following documents and particulars should be sent to the secretary of the share and loan department when application is made for a special settlement:—(Rules . . . 150).

* * * * *

B.

SHARES OF NEW COMPANIES.

The certificate of incorporation.

The certificate that the company is entitled to commence business.

A specimen of the share certificate.

A copy of the prospectus, the statement in lieu of prospectus as filed with the Registrar of Joint Stock Companies, circular or advertisement relating to the issue.

A specimen call letter.

Certified printed copies of contracts relating to the issue of shares credited as fully or partly paid.

A letter from the secretary of the company, stating—

1. That the share certificates have been or are ready to be issued.
2. The distinctive numbers of the shares allotted—
 - (a) to the public.
 - (b) to the vendors.
3. Whether the statutory meeting has been held.
4. The particulars of the company's capital.
5. The nominal amount of each share, and the amount paid in cash or credited as paid on each share.
6. In cases where the whole of the capital has not been issued at the time the application is made, whether the unissued shares are vendors' shares or are held in reserve for future issue.

C.

STOCK OR DEBENTURE STOCK OF NEW COMPANIES.

A specimen of the scrip or stock certificate.

A copy of the prospectus, the statement in lieu of prospectus as filed with the Registrar of Joint Stock Companies, circular or advertisement relating to the issue.

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Rules.

Appendix 35.

Special
Settlements.

A letter from the secretary of the company, stating—

1. The amount allotted—

(a) to the public.

(b) to others.

2. The amount paid in cash per £100 stock.

3. That the scrip or stock has been or is ready to be issued.

Appendix 36.

APPENDIX 36.

OFFICIAL QUOTATIONS.

A. CONDITIONS PRECEDENT TO AN APPLICATION FOR OFFICIAL QUOTATION.

(Rules 151 and 152.)

1. That the prospectus—

Shall have been publicly advertised.

Agrees substantially with the Act of Parliament or Articles of Association.

Provides for the issue of not less than one-half of the authorised capital, and for the payment of 10 per cent. upon the amount subscribed.

If offering debentures or debenture stock states fully the terms of redemption.

If offering debentures states whether they are to bearer or registered.

In cases where a company has sold an issue of capital or debentures or debenture stock which is subsequently offered for public subscription either by the company or any subsequent purchaser, states the authority for the issue and all material conditions of sale.

2. That two-thirds of the amount proposed to be issued of any class of shares or securities, whether such issue be the whole or a part of the authorised amount, shall have been applied for by, and unconditionally allotted to, the public, shares or securities granted in lieu of money payments not being considered to form a part of such public allotment.

3. That the Articles of Association, and the trust deed where such is required, contain the provisions specified hereafter.

4. That the certificate or bond is in the form approved.

B.

ARTICLES OF ASSOCIATION.

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Rules.

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Official
Quotations.

Articles of Association should contain the following provisions:—

1. That none of the funds of the company shall be employed in the purchase of, or in loans upon, the security of its own shares.
2. That directors must hold a share qualification.
3. That the borrowing powers of the Board are limited.
4. That the non-forfeiture of dividends is secured.
5. That the common form of transfer shall be used.
6. That all share and stock certificates shall be issued under the common seal of the company, and shall bear the autographic signatures of one or more directors and the secretary.
7. That fully-paid shares shall be free from all lien.
8. That the interest of a director in any contract shall be disclosed before execution, and that such director shall not vote in respect thereof.
9. That the directors shall have power at any time and from time to time to appoint any other qualified person as a director either to fill a casual vacancy or as an addition to the Board, but so that the total number of directors shall not at any time exceed the maximum number fixed; but that any director so appointed shall hold office only until the next following ordinary general meeting of the company, and shall then be eligible for re-election.
10. That a printed copy of the report, accompanied by the balance sheet and statement of accounts, shall, at least seven days previous to the general meeting, be delivered or sent by post to the registered address of every member, and that two copies of each of these documents shall at the same time be forwarded to the secretary of the share and loan department, the Stock Exchange, London.
11. That the charge for a new share certificate issued to replace one that has been worn out, lost, or destroyed shall not exceed one shilling.

C.

TRUST DEEDS.

Trust deeds should contain the following provisions:—

1. Where provision is made that the security shall be repayable at a premium, either at a fixed date or at any time upon notice having been given, the trust deed must further

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—
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Official
Quotations.

provide that, should the company go into voluntary liquidation for the purpose of amalgamation or reconstruction, the security shall not be repayable at a lower price.

2. The following clause should be inserted in all deeds:—

“The statutory power of appointing new trustees hereof shall be vested in the company, but a trustee so appointed must in the first place be approved of by a resolution of the debenture (or debenture stock) holders passed in the manner specified in the schedule hereto. A corporation or company may be appointed a trustee of these presents.”

3. In the clause regulating the convening of meetings of the debenture (or debenture stock) holders, the following words should be inserted, “and the trustee or trustees shall do so upon a requisition in writing signed by holders of at least one-tenth of the nominal amount of debentures (or debenture stock) for the time being outstanding.”

4. The clause defining an “extraordinary resolution” must provide that “the expression ‘extraordinary resolution’ means a resolution passed at a meeting of the debenture (or debenture stock) holders duly convened and held at which a clear majority in value of the whole of the debenture (or debenture stock) holders is present in person or by proxy, and carried by a majority consisting of not less than three-fourths of the persons voting thereat upon a show of hands, and if a poll is demanded then by a majority consisting of not less than three-fourths in value of the votes given on such poll.”

5. Should debentures or debenture stock be entitled “first mortgage,” provision must be made for the creation of a specific first mortgage in favour of the debenture or debenture stock holders.

D.

SHARE AND STOCK CERTIFICATES.

All certificates should state on their face the authority under which the company is constituted and the amount of the authorised capital of the company.

All certificates should bear a footnote to the effect that no transfer of any portion of the holding can be registered without the production of the certificate.

Where the capital of a company consists of more than one class of shares of the same denomination, the distinctive numbers of the shares of each class must be printed on the face of the share certificates.

All preference share certificates should bear on their face a statement of the company's capital, and the conditions, both as to capital and dividends, under which the shares are issued.

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Rules.

Debentures and debenture stock certificates should, in addition to legal requirements, state on their face the authority under which the company is constituted, the nominal capital of the company, the dates when the interest on the debentures or debenture stock is payable, and the authority under which the issue is made (*i.e.*, Articles of Association and resolutions); and on their back the conditions of issue, redemption, and transfer.

Appendix 36.

Official
Quotations.

E.

BONDS.

Bonds must specify the amount and conditions of the loan, the powers under which it has been contracted, and the numbers and denominations of the bonds issued.

Bonds and debentures of English companies must be under the common seal of the company, and must bear the requisite autographic signatures.

* * * * *

F.

NEW COMPANIES.

Before the application form can be issued for signature there must be supplied—

A copy of the prospectus.

Two copies of the Articles of Association.

In the case of debentures or debenture stock, the trust deed
(where possible before execution).

G. After the application form has been signed there must also be supplied in the case of—

SHARES.

The certificate of incorporation, and the certificate that the company is entitled to commence business.

Two certified copies of the prospectus, endorsed with the date when first advertised.

Two certified copies of the Memorandum and Articles of Association.

The original letters of application.

The allotment book, containing a list of applicants, the number applied for by each, and the result of each application, with a summary signed by the chairman and secretary.

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Should the allotment have taken place at an interval of six months or more before the date of the application, a certified list of present shareholders will also be required.

A copy of the letter of allotment and the date when posted.

A specimen of the share certificates.

The bankers' pass-book, accompanied by a certificate on a special form from the company's bankers, stating the amount of deposits received by them and the number of shares on which such deposits (*i.e.*, application money only, being £ per share) were paid.

Authenticated copies of all concessions and similar documents, with notarially certified printed translations, and certified printed copies of all contracts and agreements.

An undertaking—

(1) To change registered to bearer shares in one week, and *vice versa*.

(2) To certify transfers within two days.

(3) To certify transfers on Saturdays between the hours of 10.30 and 12.

A statutory declaration by the chairman and secretary stating the following particulars:—

1. That the prospectus complies with the provisions of the Companies (Consolidation) Act, 1908.
2. That all documents required by the Companies (Consolidation) Act, 1908, have been duly filed with the Registrar of Joint Stock Companies, and the dates of filing.
3. The number of shares applied for by the public.
4. The number of shares allotted unconditionally to the public (Nos. to), and the amount per share paid thereon in cash.
5. The total number of allottees and the largest number of shares (a) applied for by and (b) allotted to any one applicant.
6. The number of shares allotted for a consideration other than cash (being Nos. to).
7. The amount of deposits paid, and that such deposits are absolutely free from any lien.
8. That the share certificates have been or are ready to be issued.
9. That the purchase of the property has been completed and the purchase money paid.
10. That no impediment exists to the settlement of the account.

H. After the application form has been signed there must be supplied in the case of—

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DEBENTURES AND DEBENTURE STOCK.

Appendix 36.

Official
Quotations.

The certificate of incorporation, or Act of Parliament, and the certificate that the company is entitled to commence business.

A certified printed copy of the mortgage deed or other similar document, and the official certificate of the registration of the mortgage or charge.

Certified copies of the Articles of Association, resolutions, or other authority for the present issue.

Two certified copies of the prospectus.

The original letters of application.

The allotment book, containing a list of applicants, the amount applied for by each, and the result of each application, with a summary of the whole, signed by the chairman and secretary.

Should the allotment have taken place at an interval of six months or more before the date of the application, a certified list of present stockholders will also be required.

A copy of the allotment letter, and the date when posted.

A specimen of the debentures or debenture stock certificate, and of the scrip where scrip is issued; certificates of debenture stock allotted to vendors in lieu of money payments being enfaced "issued to vendors."

A copy of the last published report and accounts.

The bankers' pass-book, accompanied by a certificate, on a special form, from the company's bankers, stating the amount of deposits received by them, and the amount of debentures or debenture stock on which such deposits (*i.e.*, application money only, being £ per debenture) were paid.

A statutory declaration by the chairman and secretary stating—

1. That the prospectus complies with the provisions of the Companies (Consolidation) Act, 1908, and that all documents required by that Act have been duly filed with the Registrar of Joint Stock Companies, and the dates of filing.
2. In the case of an English company charging property abroad, that the necessary mortgage has been properly legalised in the country where the property is situated.
3. The amount of stock applied for by the public.
4. The amount unconditionally allotted to the public (Nos. to).
5. The amount, viz., £ per cent., paid thereon in cash.

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6. The amount allotted for a consideration other than cash (Nos. _____ to _____).
7. The total amount of deposits, and that such deposits are absolutely free from any lien.
8. The total number of allottees.
9. The largest amount of debentures or debenture stock (a) applied for by, and (b) allotted to any one applicant.
10. That the debentures or debenture stock certificates have been or are ready to be issued.
11. That a trust deed has been executed and completed, if such be the case.
12. The effect of such trust deed, and the nature of the charge created thereby, in favour of the debenture holders.
13. That no impediment exists to the settlement of the account.

A statutory declaration by the chairman and secretary stating—

1. The total amount of the authorised capital of the company, and how constituted.
2. The number of shares allotted unconditionally to the public (Nos. _____ to _____), and the amount paid on each share in cash.
3. The number of shares taken by concessionaires, owners of property, contractors, or other parties not included in the public allotment (being Nos. _____ to _____).
4. That the share certificates have been or are ready to be issued.
5. That the purchase of the property has been completed and the purchase money paid.

* * * * *

K. After the application form has been signed there must be supplied in the case of—

FURTHER ISSUES.

A king's printers' copy of the Act of Parliament authorising the resolutions, &c., creating, and the circular or prospectus offering, the new issue.

If shares have been issued credited as fully or partly paid, certified printed copies of the contracts relating thereto.

A copy of the allotment letter.

A copy of the last report and accounts.

A specimen of the share certificate.

The allotment book, unless the allotment is *pro rata*.

An undertaking—

- (1) To change registered to bearer shares in one week, and *vice versa*.
- (2) To certify transfers within two days.
- (3) To certify transfers on Saturdays between the hours of 10.30 and 12.

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Official
Quotations.

A statutory declaration by the secretary stating—

1. That the prospectus or circular complies with the provisions of the Companies (Consolidation) Act, 1908.
2. That all documents required by the Companies (Consolidation) Act, 1908, have been duly filed with the Registrar of Joint Stock Companies, and the dates of filing.
3. That the shares (Nos. to) have been applied for by and unconditionally allotted to the shareholders or the public, or sold upon the market, as the case may be.
4. The amount per share paid in cash.
5. The total number of allottees, and the largest number of shares applied for by and allotted to any one applicant.
6. That the certificates have been or are ready to be issued.
7. That no impediment exists to the settlement of the account.
8. It must also be stated whether or not the shares are in all respects identical with those already quoted in the official list.

The statement that shares are in all respects identical means that—

They are of the same nominal value, and that the same amount per share has been called up.

They carry the same rights as to unrestricted transfer, attendance and voting at meetings, and in all other respects.

They are entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each share will amount to exactly the same sum.

The statement that stock is in all respects identical means that—

All the stock is entitled to the same rights as to unrestricted transfer, and in all other respects.

All the stock is entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each £100 of the stock will amount to exactly the same sum.

L. After the application form has been signed there must be supplied in the case of—

VENDORS' SHARES.

A certified list of the present holders of the vendors' shares.

A specimen of the share certificates.

A statutory declaration by the secretary stating—

1. That the vendors' shares (Nos. to)
have all been issued and certificates delivered.
2. That the shares are in all respects identical with those already
quoted in the official list.

M. After the application form has been signed there must be supplied in the case of—

OLD COMPANIES.

The certificate of incorporation, or Act of Parliament, and the certificate that the company is entitled to commence business.

Authenticated copies of all concessions and similar documents, with
notarially certified printed translations.

Certified copies of all prospectuses, original or otherwise, endorsed with the date when first advertised.

Two certified copies of the Memorandum and Articles of Association.

A specimen of the share certificate and of the allotment letter.

A certified copy of present register of shareholders.

Certified printed copies of contracts, agreements, &c., together with copies of all contracts relating to the issue of shares credited as fully or partly paid.

A certified copy of the company's last published report and accounts.

A short history of the company, setting forth its origin, progress, dividends, &c., the number of transfers registered during the last twelve months, and the number of shares represented by such transfers.

An undertaking—

- (1) To change registered to bearer shares in one week, and *vice versa*.
- (2) To certify transfers within two days.
- (3) To certify transfers on Saturdays between the hours of 10.30 and 12.

Statutory declaration by the chairman and secretary stating the following particulars:— London Stock Exchange Rules.

1. That the prospectus complied with the provisions of the Companies (Consolidation) Act, 1908. Appendix 36.
2. That all documents required by the Companies (Consolidation) Act, 1908, have been duly filed with the Registrar of Joint Stock Companies, and the dates of filing. Official Quotations.
3. The number of shares applied for by the public.
4. The number of shares allotted unconditionally to the public (Nos. to), and the amount per share paid thereon in cash.
5. The number of shares allotted for a consideration other than cash (being Nos. to).
6. That the share certificates have been or are ready to be issued.
7. That the purchase of the properties has been completed and the purchase money paid.

* * * * * * * * *

O. After the application form has been signed, there must be supplied in the case of—

RECONSTRUCTED COMPANIES.

The certificate of incorporation, and the certificate that the company is entitled to commence business.

A statement of the plan of reconstruction, together with certified copies of all resolutions passed and circulars issued in connection with the reconstruction.

The allotment book, with a summary signed by the chairman and secretary.

The allotment letter, and the date when posted.

A specimen of the share certificate.

Two certified copies of the Memorandum and Articles of Association.

Certified printed copies of all contracts, agreements, &c.

Copies of all contracts relating to the issue of fully or partly paid shares.

An undertaking—

- (1) To change registered to bearer shares in one week, and *vice versa*.
- (2) To certify transfers within two days.
- (3) To certify transfers on Saturdays between the hours of 10.30 and 12.

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—
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Official
Quotations.

A statutory declaration by the chairman and secretary stating—

1. That all documents required by the Companies (Consolidation) Act, 1908, have been duly filed with the Registrar of Joint Stock Companies, and dates of filing.
2. The authorised capital of the company.
3. The number of shares to which shareholders in the old company were entitled; the number and distinctive numbers of shares unconditionally allotted to such shareholders; and the amount per share (*a*) paid thereon in cash, and (*b*) credited as paid up.
4. The number and distinctive numbers of shares applied for by and allotted unconditionally to the public, and the amount per share (*a*) credited as paid up, and (*b*) paid thereon in cash.
5. That the share certificates have been or are ready to be issued.
6. That no impediment exists to the settlement of the account.

* * * * *

LEAVE TO DEAL.¹

ISSUE OF SECURITIES.

In the absence of any prospectus publicly advertised in this country, or circular to shareholders, the committee will require an advertisement in two leading London morning papers giving all necessary details relating to the formation of the Company and to the flotation of the issue, and stating that the directors collectively and individually are responsible for the information advertised.

These details must include statements by the chairman or secretary of the company as to—

- (1) The capital, authorised and issued.
- (2) Borrowing powers and the extent to which they have been exercised.
- (3) Date and particulars of incorporation.
- (4) Names and addresses of directors, bankers, auditors and secretary.

¹ The London Stock Exchange Committee notified in December, 1919, through the press that their requirements in the case of applications for leave to deal upon the issue of securities where no prospectus had been publicly advertised were as here set forth, and this addition to the Rules is printed from the copy communicated to the Editor by the Secretary of the Committee. The Glasgow Stock Exchange made similar regulations.

- | | |
|--|--|
| <p>(5) Objects of the company, nature of its business or particulars of property acquired.</p> <p>(6) Material conditions relating to—</p> <p style="padding-left: 40px;">(a) The formation of the company.</p> <p style="padding-left: 40px;">(b) The flotation of the issue.</p> | <p>London Stock Exchange Rules.</p> <p>—</p> <p>Leave to deal.</p> |
|--|--|

III. RULES OF GLASGOW STOCK EXCHANGE

AS TO

Glasgow Stock Exchange Rules.

SPECIAL SETTLEMENTS AND QUOTATIONS.¹

126. The Committee may appoint Special Settling Days for the Settlement of Bargains, and make such Regulations on the subject as they may deem proper, provided always that—

- (1) The Secretary shall give not less than three days' notice [on the Notice Board] of any Application for a Special Settling Day in the Shares, or Stock, or Debentures of a New Company, or in a New Loan, previously to such Application being submitted to the Committee.
- (2) In the case of a New Company, the Certificates for the Shares, or the Scrip or Certificates for the Stock, or the Scrip for the Debentures, or the Debentures, are ready for delivery; and, in the case of a New Loan, the Scrip, or Stock Certificates, or debentures are ready for delivery.
- (3) The Committee shall not fix a Special Settling Day for bargains in Shares, or Stock, or Debentures, credited as fully or partly paid, issued to the Vendors, until six months after the date fixed for the Special Settlement in the Shares, or Stock, or Debentures of the same class subscribed for by the Public. (*N.B.*—Provision (3) does not necessarily apply to Reorganisations or Amalgamations of existing Companies.)

Special settlements, and the dates thereof, fixed by the London Stock Exchange, shall be observed, unless the Committee otherwise decide.

¹ See General Notes upon Memorandum of Association, p. 5.

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127. The Committee may order the quotation in the Official List of any class of the Shares, or Stock, or Debentures of a New Company, provided—

- (i.) That the Company is of a *bona-fide* character and of sufficient magnitude and interest.
- (ii.) That not less than three days' notice [on the Notice Board] of the application has been given.
- (iii.) That the following documents have been deposited with the Secretary :—
 - (a) The Prospectus.
 - (b) The Certificate of Incorporation, Act of Parliament, or other similar document.
 - (c) The Certificate that the Company is entitled to commence business.
 - (d) The Memorandum and Articles of Association.
 - (e) The Original Applications for Shares, or Stock, or Debentures.
 - (f) The Allotment Book, with a summary signed by the Chairman and Secretary of the Company.
 - (g) A copy of the Letter of Allotment.
 - (h) A Specimen of the Certificates for the Shares, or the Scrip or Certificates for the Stock, or the Scrip for the Debentures, or the Debentures.
 - (i) Certified copies of Contracts and Agreements.
 - (j) Notarially certified translations of Concessions, Deeds, and Agreements.
 - (k) A Certificate, verified by the Statutory Declaration of the Chairman and Secretary, stating—
 - 1. That the Prospectus complies with the provisions of the Companies Acts.
 - 2. That all documents, required to be filed with the Registrar of Joint-Stock Companies, have been duly filed, and the dates of filing.
 - 3. The number of Shares, or amount of Stock or Debentures, applied for by, and unconditionally allotted to, the Public, and the distinctive numbers of the Shares, or the distinctive numbers and denominations of the Debentures, so allotted; and the amount paid in Cash on said Shares, or Stock, or Debentures.

4. The number of Shares, or amount of Stock or Debentures, allotted, in whole or in part, for a consideration other than Cash, and the distinctive numbers of the Shares, or the distinctive numbers and denominations of the Debentures, so allotted.
5. That the Certificates for the Shares, or the Scrip or Certificates for the Stock, or the Scrip for the Debentures, or the Debentures, are ready for delivery.
6. That the purchase of the properties has been completed, and the purchase-money paid.
7. That no impediment exists to the settlement of the account.

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(l) The Bankers' Pass Book.

- (m) A Certificate from the Bankers, stating the number of Shares, or amount of Stock or Debentures, for which they have received applications, and the amount of deposits paid.

(n) In the case of an issue of Debentures or Debenture Stock—

1. Certified copies of the Resolutions authorising the issue.

2. A notarially certified copy of the Trust Deed.

3. In the case of Companies registered in Scotland—

(a) Notarially certified copies of the Deeds of Conveyance or Assignment under which the Heritage is conveyed to the Debenture Trustees, with the Warrants of Registration thereon, and an attestation of the amount of Stamp Duty which the principal Deeds bear.

(b) A Statutory Declaration by the acting Solicitor that the above Deeds have been duly executed and recorded, and that the whole of the properties, purported by the Prospectus to be conveyed in security to the Debenture Trustees, are fully vested in them, in the terms, and for the purposes, set forth in the Deed of Declaration of Trust, and that the principal Deeds are retained in the custody of the Solicitors on behalf of such Debenture Trustees.

4. In the case of Companies registered in England or Ireland—the Certificate, given by the Registrar of Joint Stock Companies, of the registration of the Mortgage or Charge.

(iv.) That the Prospectus—

(a) Agrees substantially with the Act of Parliament or Memorandum and Articles of Association.

(b) Provides—

1. For the issue of not less than one-half of the Authorised Capital.

2. For the payment of not less than Ten per cent. upon the amount subscribed.

(c) If offering Debentures or Debenture Stocks, however designated or described, states all terms, conditions, and circumstances under which such are, or may become, redeemable or repayable.

(v.) That at least two-thirds of the amount proposed to be issued of any such class of the Shares, or Stock, or Debentures (whether such issue be the whole or part of the Authorised Amount) shall have been applied for by, and unconditionally allotted to, the Public (Shares, or Stock, or Debentures reserved or granted, in lieu of money payments, to Concessionaires, Owners of Property, or others, not being considered to form part of such Public Allotment).

(vi.) That the Articles of Association restrain the Directors from employing the funds of the Company in the purchase of, or in loans upon the security of, its own Shares, and are considered by the Committee satisfactory in other respects.

(vii.) In the case of an issue of Debentures or Debenture Stock, that the provisions of the Trust Deed are considered by the Committee satisfactory.

(viii.) That the Form of the Certificates for the Shares, or the Scrip or Certificates for the Stock, or the Scrip for the Debentures, or the Debentures, is approved by the Committee.

(ix.) That every Debenture, or Certificate for Debenture Stock, shall contain the information required in Clause iv. (c); and, if any Debentures, or Debenture Stock, be allotted to Vendors in lieu of money payments, such Debentures, or the Certificates for such Debenture Stock, shall be enfaced “ Issued to Vendors.”

- (x.) That a Member of the Association is authorised to give full information as to the formation of the undertaking, and is able to furnish the Committee with all particulars they may require. Glasgow
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The Committee may order the quotation of Shares, or Stock, or Debentures, credited as fully or partly paid, issued to Vendors, six months after the date fixed for the Special Settlement of the Shares, or Stock, or Debentures, of the same class, subscribed for by the Public, provided a quotation for the latter is also granted.

In the case of (1) Shares, or Stock, or Debentures, officially quoted in London, (2) New Loans, (3) Further Issues by Companies already quoted, and (4) Old Companies, the Committee may make such regulations, and call for such documents and information, as they may see fit.¹

March, 1915.

¹ See addendum to London Stock Exchange Rules, p. 422, as to Leave to deal in Securities of Companies where no prospectus has been publicly advertised.

IV. ILLUSTRATIVE ABSTRACTS OF FEES AND DUTIES PAYABLE ON REGISTRATION OF COMPANIES.¹

I.—PUBLIC COMPANY.

SHARE CAPITAL OF £320,000.

No. of Form.	Cost of Form.		Deed Stamps.	Fees.	Duty.
41	2d	Declaration of Compliance, ²	—	£0 5 0	—
42	2d	Consent of Directors,	—	0 5 0	—
43	2d	List of Persons consenting,	—	0 5 0	—
—	—	Contract for Qualification Shares, ³	—	0 5 0	—
—	—	Memorandum of Association,	£0 10 0	39 15 0	—
—	—	Articles of Association,	0 10 0	0 5 0	—
25	—	Statement of Capital,	—	—	£3200
4	2d	Registered Office Notice,	—	0 5 0	—
9a	2d	Particulars of Directors,	—	0 5 0	—
—	—	Prospectus, or	—	0 5 0	—
55	3d	Statement in lieu of Pro- spectus, ³	—	0 5 0	—
—	—	Authority to Sign, ³	0 10 0	0 5 0	—
44-44a	2d	Declaration by Secretary,	—	0 5 0	—
45	2d	Return of Allotments,	—	0 5 0	—
—	—	Contract (if any), ⁴	—	0 5 0	—
			£1 10 0	£43 0 0	£3200 ⁵

II.—PRIVATE COMPANY.

SHARE CAPITAL OF £50,000.

No. of Form.	Cost of Form.		Deed Stamps.	Fees.	Duty.
41	2d	Declaration of Compliance,	—	£0 5 0	—
—	—	Memorandum of Association,	£0 10 0	16 5 0	—
—	—	Articles of Association,	0 10 0	0 5 0	—
25	—	Statement of Capital,	—	—	£500
4	2d	Registered Office Notice,	—	0 5 0	—
9a	2d	Particulars of Directors,	—	0 5 0	—
45	2d	Return of Allotments,	—	0 5 0	—
—	—	Contract (if any),	—	0 5 0	—
			£1 0 0	£17 15 0	£500

¹ The fees and duty are impressed on the documents at the Inland Revenue Office, Edinburgh.

² "Enemy Declarations" are omitted in view of the anticipated early removal of war restrictions in consequence of peace.

³ These may not be required. The contract for qualification shares is liable to the stamp duty of sixpence in respect of each director signing.

⁴ The *ad valorem* stamp duty on contracts for conveyance of property depends on the consideration.

⁵ The duty is calculated at the increased rate of £1 per cent as proposed under the Budget of April, 1920.

III.—UNLIMITED COMPANY.

Note.—In the case of an unlimited company with a share capital the same fees are payable as in the case of other companies limited by shares, but no capital duty is payable on registration.

IV.—NON-PROFIT COMPANY—LIMITED BY GUARANTEE.

UNLIMITED MEMBERSHIP.

No. of Form.	Cost of Form.		Deed Stamps.	Fees.
41	2d	Declaration of Compliance,	—	£0 5 0
42	2d	Consent of Directors,	—	0 5 0
43	2d	List of Persons consenting,	—	0 5 0
—	—	Memorandum of Association,	£0 10 0	20 0 0
—	—	Articles of Association,	0 10 0	0 5 0
—	—	Licence,	—	0 5 0
4	2d	Registered Office Notice,	—	0 5 0
55	3d	Statement in lieu of Pro-		
		spectus,	—	0 5 0
44a	2d	Declaration by Secretary,	—	0 5 0
9a	2d	Particulars as to Members		
		of Council or Directors,	—	0 5 0
—	—	Fees payable to Board of		
		Trade,	—	5 10 0
			£1 0 0	£27 15 0

V.—NOTE AS TO PROFESSIONAL CHARGES IN COMPANY MATTERS.

It was suggested to the Editor that in this volume a selection of professional business accounts should be included as of guiding and suggestive use to solicitors in reference to the formation and registration of the various classes of companies. But the Editor found this impracticable. It is difficult to give particular examples that will be of general application, and, indeed, such forms are more appropriate to works on expenses. Each company differs from another in so many ways that one account is no guide in forming an estimate of the total cost of all the steps leading up to and including incorporation. In the case of a public company, the necessity for the employment of accountants in regard to audits, or of obtaining skilled valuations of various kinds of property, heritable or moveable, and the publication or not of a prospectus, with or without a debenture issue, are matters calling for special consideration. But it may be suggested that, unless where expense is of no concern in such flotations, it is prudent to arrange

for some limitation of the fees of experts when calling their services in aid. The expense of printing, circulating, and advertising prospectuses is a heavy item, and in this connection it is safe to have some estimate of the probable cost from advertising agents. The cost of investigation of titles and of conveyances necessary for vesting property in the company, and of the creation of any debenture trust, also enters into the matter of preliminary expenses. The fees and duties payable to the Government upon registration can be fixed, and the tables given by way of illustration in Appendix IV. may be found useful.

With regard to the professional fees of solicitors in company work, it was pointed out by L.P. Dunedin in *W. & A. K. Johnston*, 1906, 8 F. 453, that the Table of Fees (which is still in operation) makes no provision for the business of company promotion. See *Company Law and Practice*, p. 8. The general observations made by L.P. Dunedin in the case cited are of present value. The Editor is among those who consider that the old-established custom of solicitors making out their business accounts in great detail, charging for every letter or attendance according to a fixed scale, as if one were dealing with a tradesman's bill, is out of date. The length of a letter or the duration of a consultation has not necessarily any bearing on its money value to the client. It is somewhat anomalous that advice, probably of the greatest possible importance to the client tendered by a solicitor of skill in a short interview, should be remunerated by the duration of the meeting. This criticism seems peculiarly apposite to company work. Conveyancing business is effectively dealt with by general *ad valorem* fees. In the opinion of the Editor, there is much to be said for the practice adopted by some leading solicitors of rendering their accounts by simply stating a general fee for legal work, or of making a stipulation for a particular fee for the retention of their services for particular classes of work. Solicitors preserve their record of actual work done. In connection with company work in particular, the solicitor can only be remunerated, as a rule, by a fee that has, or appears to have, no relation to the mere number of letters or attendances. Solicitors may thus be placed sometimes in a delicate position, and induced to refrain from charging a sum in their opinion as fair and adequate for special services rendered in fear of some deduction upon taxation. Different auditors may take different views. No solicitor cares for the presentation of an account to his client that bears as the result of audit that he has been apparently overcharging. It is equally unsatisfactory that to avoid this difficulty he should state a fee purposely below the sum that would appear correct. With the view of getting over this situation, where no special or retaining fee is arranged with the client, the Editor has the best reason for stating that

it is proper for the solicitor, where no special bargain has been made as recommended by the judges in the case cited, to specify in a general way the nature of the work done, where known *ad valorem* fees are inapposite, and to ask the consent of the client to a reference to the Auditor of the Court of Session, or any other proper party selected as auditor, to fix the appropriate fee. The work which the solicitor has difficulty in charging should be detailed at the end of his account, with a note asking the auditor to fix an appropriate fee therefor.

VI. PROCEDURE IN CASES OF APPLICATION TO THE BOARD OF TRADE FOR A LICENCE UNDER SECTION 20 OF THE COMPANIES (CONSOLIDATION) ACT, 1908.

1. The accompanying drafts have been prepared to show generally the manner in which the Memorandum and Articles of Association should be framed where it is proposed to apply to the Board of Trade for a licence under the 20th section of the Companies (Consolidation) Act, 1908.

2. Under this section any chamber, institute, society, or other association formed for the purpose of promoting commerce, art, science, religion, charity, or any other useful object which does not involve the division of profit, may, if it obtains the licence of the Board of Trade, be incorporated by registration with limited liability, but without the addition of the word "limited" to its name.

3. It is to be understood that the drafts of the Memorandum and Articles of Association are subject to such additions, alterations, and omissions as the circumstances of the association desiring incorporation may render necessary, or the Board of Trade may require.

4. An association desiring to be incorporated in this manner should make a written application to the Board of Trade for a licence, and, together with such application, should transmit for consideration a *draft*¹ in duplicate of the proposed Memorandum of Association and Articles of Association, together with a list of the promoters and proposed governing body of the association, and any report or statement of its previous proceedings as an unincorporated body, together with a statement showing in detail the assets (with estimated values) and liabilities to be taken over by the proposed association. If the Board of Trade are

¹ It is requested that the draft, and any subsequent revisions that may be required, may, whether in print or manuscript, be of foolscap-sized paper.

satisfied that the application may be entertained, they will furnish a notice of such application, to be inserted in a local newspaper for the information of the public, and if, after the expiration of a limited time, there appears to be no sufficient reason why the licence should not be granted, the Board of Trade will accept the Memorandum and Articles of Association, with such amendment, if any, as may be necessary, and grant a licence.

5. The Board of Trade will require to have the Memorandum and Articles of Association settled on their behalf by counsel, at the expense of the applicants, for which purpose a fee of £5 10s. must accompany the application.¹ The Board of Trade will not, however, be responsible for the Memorandum or Articles being properly framed as regards the interests of the association. No other fees or charges are payable to the Board of Trade, and the fees for registration of the association may be ascertained by reference to Table B (II.) of the First Schedule to the Companies (Consolidation) Act, 1908.

¹ A cheque for the amount of this fee should be made payable to "The Accountant General to the Board of Trade."

INDEX

Note.—To save printing in this Index these abbreviations are used :—

a.s. = Article-s of Association
c.s. = Company-ies
m. = Memorandum of Association
n.s. = Note-s

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